

DRAFT 03-19-09



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

STANDARD SPECIFICATIONS

2010

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GENERAL PROVISIONS

1 GENERAL

1-1.01 GENERAL

Section 1 includes general rules of interpretation.

Sections 1 through 9 include general specifications applicable to every contract unless specified as applicable under certain conditions.

Sections 10 through 15 include specifications for general construction applicable to every contract unless specified as applicable under certain conditions.

Sections 16 through 87 include construction specifications for specific work items.

Sections 88 through 100 include specifications for common materials. For a material specified in these sections, that material specified in other sections must comply with the specifications in sections 88 through 95.

Sections 101 through 116 include construction specifications for buildings.

The specifications are written to the Bidder before award and the Contractor after. Before award, interpret sentences written in the imperative mood as starting with *The Bidder must* and interpret *you* as *the Bidder* and *your* as *the Bidder's*. After award, interpret sentences written in the imperative mood as starting with *The Contractor must* and interpret *you* as *the Contractor* and *your* as *the Contractor's*.

Omission of *a*, *an*, and *the* is intentional. These articles have been omitted in some specifications for streamlining purposes.

Headings are included for the purposes of organization and referencing. Inclusion of a heading with no related content, *Reserved*, or *Not Used* does not indicate that no specification exists for that subject; applicable specifications may be covered in a general or referenced specification.

Unless an object or activity is specified to be less than the total, the quantity or amount is all of the object or activity.

All items in a list apply unless the items are specified as choices.

Make checks and bonds payable to the Department of Transportation.

1-1.02 REFERENCES

A reference within parentheses to a law or regulation is included in the Contract for convenience only and is not a comprehensive listing of related laws and regulations. Lack of a reference does not indicate no related laws or regulations exist.

Where the version of a referenced document is not specified, use the current version in effect on the date of *Notice to Bidders*.

A reference to a section includes the general specifications for the section.

Where a section number is referenced without a reference to a document, the reference is to a section of the *Standard Specifications* as revised by any revised standard specification, special provision, or both.

A code not specified as a federal code is a California code.

A department not specified as a federal or local department is a California department.

1-1.03 ABBREVIATIONS

The meaning of an abbreviation used in the specifications and the *Bid Item List* is as described in Appendix C of *NIST Handbook 44* and as follows:

Abbreviations

Abbreviation	Meaning
AASHTO	American Association of State Highway and Transportation Officials
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AMA	archaeological monitoring area
ANSI	American National Standards Institute
API	American Petroleum Institute
ASME	American Society of Mechanical Engineers
ASQ	American Society for Quality
ASTM	American Society for Testing and Materials
AWPA	American Wood-Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
Cal/OSHA	California Division of Occupational Safety and Health Administration
CAMUTCD	California Manual on Uniform Traffic Control Devices
CIH	Certified Industrial Hygienist
CPM	critical path method
DBE	Disadvantaged Business Enterprise
DRA	Dispute Resolution Advisor
DRB	Dispute Resolution Board
DVBE	Disabled Veteran Business Enterprise
EEL	Edison Electrical Institute
EIA	Electronic Industries Alliance
ESA	environmentally sensitive area
f_c	extreme fiber compressive stress in concrete at service loads
f'_c	compressive strength of concrete
FHWA	Federal Highway Administration
(F)	final pay item
ITE	Institute of Transportation Engineers
IEEE	Institute of Electrical and Electronics Engineers
GAAP	Generally Accepted Accounting Principles
ksf	kips per square foot
ksi	kips per square inch
LS	lump sum
LNMI	lane mile
METS	Department's Materials Engineering and Testing Services
MFBM	thousand foot board measure
MPI	Master Painters Institute
NPDES	National Pollutant Discharge Elimination System
NEMA	National Electrical Manufacturers Association
NIST	National Institute of Standards and Technology
PLAC	permit, license, agreement, certification, or any combination of these
PCC	portland cement concrete
pcf	pounds per cubic feet
SMSA	Standard Metropolitan Statistical Area
SSPC	The Society for Protective Coatings
STA	station (100 feet)
SWPPP	storm water pollution prevention plan
TAB	tablet
TIA	time impact analysis
UL	Underwriters Laboratories, Inc
USC	United States Code
VECP	value engineering change proposal

1-1.04 DEFINITIONS

1-1.04A General

Interpret terms as defined in the Contract documents. A construction-industry term not defined in the Contract documents has the meaning defined in *Means Illustrated Construction Dictionary, Condensed Version, Second Edition*.

1-1.04B Glossary

activity: Task, event, or other project element on a schedule that contributes to completing the project. An activity has a description, start date, finish date, duration, and one or more logic ties.

aerially deposited lead: Lead primarily from vehicle emissions deposited within unpaved areas or formerly unpaved areas.

archaeological monitoring area: Area within or near construction limits where access is allowed, but work is subject to archaeological monitoring.

archaeological resources: Remains of past human activity, including historic and prehistoric material (e.g., tools and tool fragments, hearth and food remains, structural remains, and human remains).

Authorized Material Lists: Lists of pretested and inspected materials authorized for use.

Authorized Material Source List: List of pretested and inspected material sources authorized for use.

basement material: Material in excavation or embankment under the lowest layer to be placed.

bid item: Specific work unit for which the Bidder provides a price.

Bid Item List: List of bid items and the associated quantities.

Bid Item List, verified: Bid Item List with verified prices. The *Contract Proposal of Low Bidder* at the Department's Web site is the verified Bid Item List.

building-construction contract: Contract that has *building construction* on the cover of the *Notice to Bidders and Special Provisions*.

California Test: Department-developed test for determining work quality. For California Tests, go to the METS Web site.

certificate of compliance: Certificate stating the material complies with the Contract.

Certified Industrial Hygienist: Industrial hygienist certified in comprehensive practice by the American Board of Industrial Hygiene.

commercial quality: Quality meeting the best general practices.

commercial source: Established business operating as a material source to the general public.

Contract: Written and executed contract between the Department and the Contractor.

Contract acceptance: Director's written acceptance of a completed Contract.

Contract bonds: Security for the payment of workers and suppliers furnishing materials, labor, and services and for guaranteeing the Contractor's work performance.

Contractor: Person or business or its legal representative entering into a Contract with the Department for performance of the work.

controlling activity: Construction activity that will extend the scheduled completion date if delayed.

critical delay: Delay that extends the scheduled completion date.

critical path: Longest continuous chain of activities for the project that has the least amount of total float of all chains. In general, a delay on the critical path extends the scheduled completion date.

critical path method: Network based planning technique using activity durations and relationships between activities to calculate a schedule for the entire project.

day: 24 consecutive hours running from midnight to midnight; calendar day.

1. **business day:** Day on the calendar except Saturday or holiday.
2. **working day:** Time measure unit for work progress. A working day is any day except:
 - 2.1. Saturday and holiday
 - 2.2. Day when you cannot perform work on the controlling activity for at least 50 percent of the day with at least 50 percent of the normal labor and equipment due to any of the following:
 - 2.2.1. Adverse weather-related conditions that cause the Contractor to dismiss the crew
 - 2.2.2. Maintaining traffic under the Contract
 - 2.2.3. Engineer's direction to suspend the controlling activities for reasons unrelated to the Contractor's performance
 - 2.2.4. Unanticipated event not caused by either party such as:
 - 2.2.4.1. Act of God (Pub Cont Code § 7105)
 - 2.2.4.2. Act of a public enemy
 - 2.2.4.3. Epidemic
 - 2.2.4.4. Fire
 - 2.2.4.5. Flood
 - 2.2.4.6. Governor-declared state of emergency
 - 2.2.4.7. Landslide
 - 2.2.4.8. Quarantine restriction
 - 2.2.5. Issue involving a third party, including:
 - 2.2.5.1. Industry or area-wide labor strike
 - 2.2.5.2. Material shortage
 - 2.2.5.3. Freight embargo
 - 2.2.5.4. Jurisdictional requirement of a law enforcement agency
 - 2.2.5.5. Workforce labor dispute of a utility or nonhighway facility owner resulting in a nonhighway facility rearrangement not described and not solely for the Contractor's convenience. Rearrangement of a nonhighway facility includes installation, relocation, alteration, or removal of the facility.

deduction: Money permanently taken from progress payment and final payment. Deductions are cumulative and are not retentions under Pub Cont Code § 7107.

Department: Department of Transportation as defined in St & Hwy Code § 20 and authorized in St & Hwy Code § 90; its authorized representatives.

detour: Temporary route for traffic around a closed road part. A passageway through a job site is not a detour.

Director: Department's Director.

Disabled Veteran Business Enterprise: Business certified as a DVBE by the Office of Small Business and DVBE Services, Department of General Services.

dispose of: Remove from the job site.

Engineer: The Resident Engineer responsible for the Contract's administration.

environmentally sensitive area: Area within or near construction limits where access is prohibited or limited to protect environmental resources.

excusable delay: Delay to a controlling activity beyond the Contractor's control and not reasonably foreseeable when the work began such as:

1. Change in the work
2. Department action that is not part of the Contract
3. Presence of an underground utility main not described in the Contract or in a location substantially different from that specified
4. Described facility rearrangement not rearranged as described, by the utility owner by the date specified, unless the rearrangement is solely for the Contractor's convenience
5. Department's failure to obtain timely access to the right-of-way
6. Department's failure to review a submittal or provide notification in the time specified

federal-aid contract: Contract that has a federal-aid project number on the cover of the *Notice to Bidders and Special Provisions*.

final pay item: Item whose quantity shown on the verified Bid Item List is the quantity paid.

fixed cost: Labor, material, or equipment cost directly incurred by the Contractor as a result of performing or supplying a particular bid item that remains constant regardless of the item's quantity.

grading plane: Basement material surface on which the lowest layer of subbase, base, pavement, surfacing, or other specified layer is placed.

highway: Whole right-of-way or area reserved for use in constructing the roadway and its appurtenances.

holiday:

Holidays	
Holiday	Date observed
Every Sunday	Every Sunday
New Year's Day	January 1st
Birthday of Martin Luther King, Jr.	3rd Monday in January
Lincoln's Birthday	February 12th
Washington's Birthday	3rd Monday in February
Cesar Chavez Day	March 31st
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving Day	Day after Thanksgiving Day
Christmas Day	December 25th

If January 1st, February 12th, March 31st, July 4th, November 11th, or December 25th falls on a Sunday, the Monday following is a holiday. If November 11th falls on a Saturday, the preceding Friday is a holiday.

idle equipment: Equipment:

1. On the job site at the start of a delay
2. Idled because of the delay
3. Not operated during the delay

informal-bid contract: Contract that has "Informal Bid Authorized by Pub Cont Code § 10122" on the cover of the *Notice to Bidders and Special Provisions*.

Information Handout: Supplemental project information furnished to bidders as a handout.

Labor Surcharge and Equipment Rental Rates: Department publication that lists labor surcharge and equipment rental rates.

laboratory: Laboratory authorized by the Department to test materials.

landscaping: Practice of a landscaping contractor under 16 CA Code of Regs § 832.27. *Highway planting* in the Department's manuals means landscaping.

material shortage: Shortage of raw or produced material that is area-wide and caused by an unusual market condition, except if any of the following occurs:

1. Shortage relates to a produced, nonstandard material
2. Supplier's and the Contractor's priority for filling an order differs
3. Event outside the U.S. for a material produced outside the U.S.

median: Portion of a divided highway separating the traveled ways including inside shoulders.

mobilization: Preparatory work that must be performed or costs incurred before starting work on the various Contract items (Pub Cont Code § 10104).

paleontological resources: Fossils and the deposits they are found in. Fossils are evidence of ancient life preserved in sediments and rock. Examples of paleontological resources are remains of (1) animals, (2) animal tracks, (3) plants, and (4) other organisms. Archaeological resources are not paleontological and fossils found within an archaeological resource are generally considered archaeological resources, not paleontological resources.

pavement: Uppermost layer of material placed on the traveled way or shoulder.

plans: Standard plans, revised standard plans, and project plans

1. **standard plans:** Drawings standard to Department construction projects.
2. **revised standard plans:** New or revised standard plans.
3. **project plans:** Drawings specific to the project, including certified shop drawings

plant establishment period: Number of days specified in the project- specific specifications for plant establishment.

quality control plan: Contractor's plan to ensure QC.

roadside: Area between the outside shoulder edge and the right-of-way limits.

roadway: That portion of the highway within the outside lines of curbs, sidewalks, slopes, ditches, channels, or waterways. Roadway includes structures and features necessary for safety, protection of facilities, and drainage.

schedule:

1. **baseline schedule:** The initial schedule showing the original work plan beginning on the date of Contract approval. This schedule shows no completed work to date and no negative float or negative lag to any activity.
2. **revised schedule:** Schedule that incorporates a proposed or past change to logic or activity durations.
3. **updated schedule:** Current schedule developed from the accepted baseline and any subsequent accepted updated or revised schedules through regular monthly review to incorporate actual past progress.

scheduled completion date: Planned project completion date shown on the current schedule.

shoulder: Roadway portion contiguous with the traveled way for stopped vehicle accommodation, emergency use, and lateral support of base and surface courses.

small tool: Tool or piece of equipment not listed in Labor Surcharge and Equipment Rental Rates that has a replacement value of \$500 or less.

specifications: Standard specifications, revised standard specifications, and special provisions.

1. **standard specifications:** Specifications standard to Department construction projects.
2. **revised standard specifications:** New or revised standard specifications.
3. **special provisions:** Specifications specific to the project.

State: The State of California, including its agencies, departments or divisions whose conduct or action is related to the work.

Structure Design: Offices of Structure Design of the Department of Transportation.

submittal:

1. **action submittal:** Written and graphic information that requires the Department's response.

2. **informational submittal:** Written information that does not require the Department's response.

substantial defects: Defects plainly seen as damaged, displaced, or missing parts or improper functioning of materials, parts, equipment, or systems.

substructure: Bridge parts below the bridge seats, pier tops, and haunches for rigid-framed bridges or spring lines for arched bridges; includes abutment backwalls, abutment parapets, and wingwalls.

superstructure: Bridge parts except the substructure.

supplemental project information: Information relevant to the project, specified as supplemental project information, and made available to bidders.

material source plant audit: Self-audit and a Department audit evaluating a plant's capability to consistently produce materials complying with the Contract.

time impact analysis: Analysis using a CPM schedule developed specifically to demonstrate the effect a proposed or past change or delay has on the current scheduled completion date.

total bid: Sum of the item totals as verified by the Department; original contract price.

traffic: Pedestrians, bicyclists, ridden or herded animals, vehicles, streetcars, and other conveyances either singularly or together while using any highway for purposes of travel.

traffic lane: Portion of traveled way used for the movement of a single line of vehicles.

traveled way: Roadway portion for the movement of vehicles except shoulders.

tunnel: As defined under 8 CA Code of Regs § 8403 et seq.

unauthorized work: Work performed beyond the lines and grades described in the Contract or established by the Engineer or extra work performed without authority.

withhold: Money temporarily or permanently taken from progress payment.

work: Resources and activities required for Contract acceptance, including labor, materials, equipment, and the created product.

work plan: Detailed formulation of a program of action.

work zone: Area of a highway with construction, maintenance, or utility work activities.

1-1.05 DISTRICTS

District Composition and Office Addresses

District	Counties	Location address	Mailing address
1	Del Norte (DN), Humboldt (Hum), Lake (Lak), Mendocino (Men)	1656 UNION ST EUREKA, CA	PO BOX 3700 EUREKA CA 95502
2	Lassen (Las), Modoc (Mod), Plumas (Plu), Shasta (Sha), Siskiyou (Sis), Tehama (Teh), Trinity (Tri)	1657 RIVERSIDE DR REDDING, CA	PO BOX 496073 REDDING CA 96049-6073
3	Butte (But), Colusa (Col), El Dorado (ED), Glenn (Gle), Nevada (Nev), Placer (Pla), Sacramento (Sac), Sierra (Sie), Sutter (Sut), Yolo (Yol), Yuba (Yub)	703 B ST MARYSVILLE, CA	PO BOX 911 MARYSVILLE CA 95901
4	Alameda (Ala), Contra Costa (CC), Marin (Mrn), Napa (Nap), San Francisco (SF), San Mateo (SM), Santa Clara (SCI), Solano (Sol), Sonoma (Son)	111 GRAND AVE OAKLAND, CA	PO BOX 23660 OAKLAND CA 94623-0660
5	Monterey (Mon) San Benito (SBt), San Luis Obispo (SLO), Santa Barbara (SB), Santa Cruz (SCr)	50 HIGUERA ST SAN LUIS OBISPO, CA	50 HIGUERA ST SAN LUIS OBISPO, CA 93401-5415
6	Fresno (Fre), Kern (Ker), Kings (Kin), Madera (Mad), Tulare (Tul)	1352 W. OLIVE AVE FRESNO, CA	PO BOX 12616 FRESNO CA 93728-2616
7	Los Angeles (LA), Ventura (Ven)	100 S. MAIN ST LOS ANGELES, CA	100 S MAIN ST LOS ANGELES CA 90012
8	Riverside (Riv), San Bernardino (SBd)	464 W 4TH St SAN BERNARDINO, CA	464 W 4TH St SAN BERNARDINO CA 92401-1400
9	Inyo (Iny), Mono (Mno)	500 S MAIN ST BISHOP, CA	500 S MAIN ST BISHOP CA 93514-3423
10	Alpine (Alp), Amador (Ama), Calaveras (Cal), Mariposa (Mpa), Merced (Mer), San Joaquin (SJ), Stanislaus (Sta), Tuolumne (Tuo)	1976 E CHARTER WAY STOCKTON, CA	PO BOX 2048 STOCKTON CA 95201
11	Imperial (Imp), San Diego (SD)	4050 TAYLOR ST SAN DIEGO, CA	4050 TAYLOR ST SAN DIEGO CA 92110-2737
12	Orange (Ora)	3347 MICHELSON DR STE 100 IRVINE, CA	3347 MICHELSON DR STE 100 IRVINE CA 92612-0661

A project with work in District 1, 2, or 3 is a North Region project. For Districts 1, 2, and 3, interpret each reference to the district office as the North Region office. The North Region office address is the District 3 address.

1-1.06 FREEZE-THAW REGIONS

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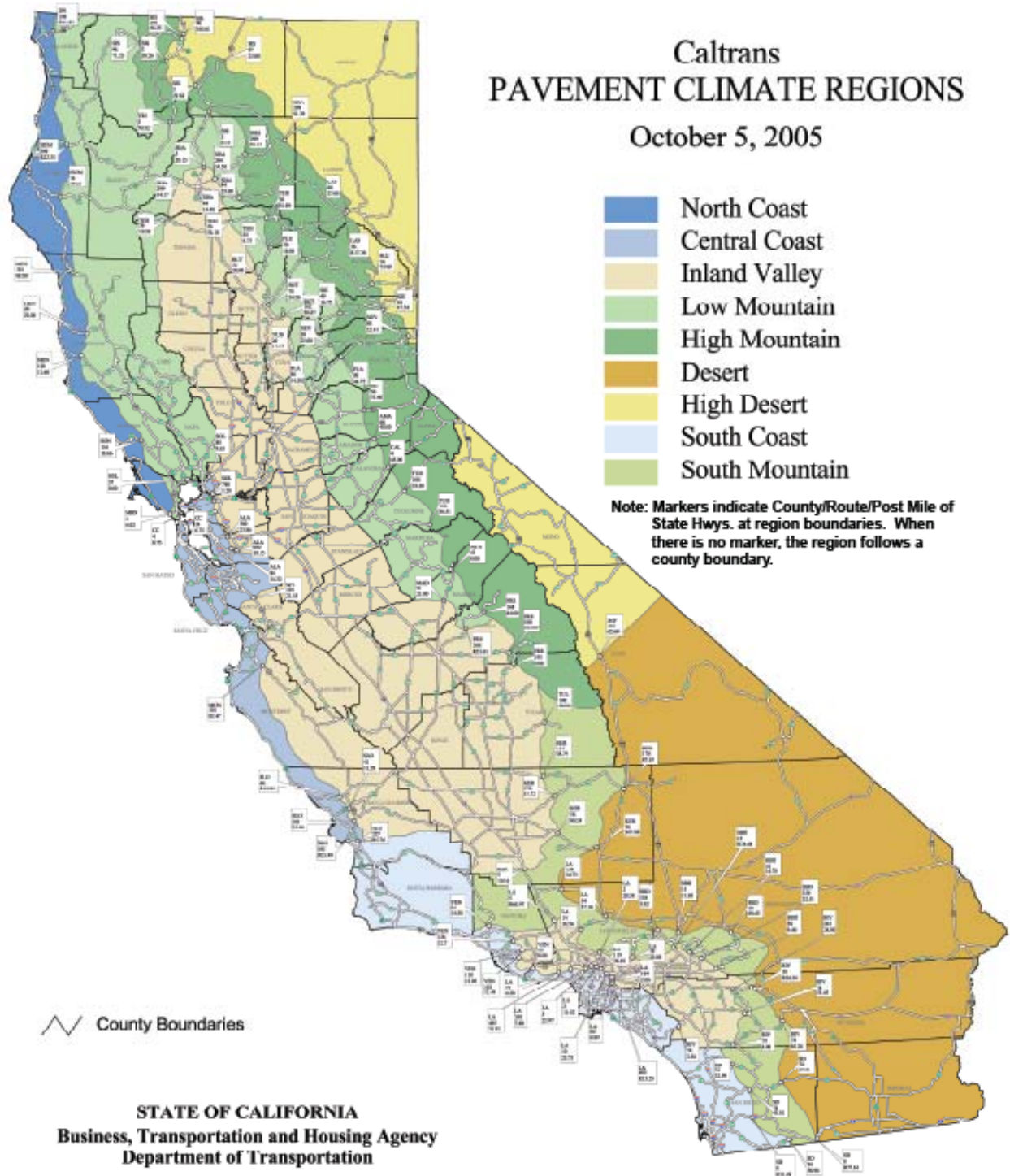
Freeze-Thaw Regions

County	Route	Post mile limits
Alp	All	All
Ama	49	All
	88	14.3 to 71.7
But	70	20.5 to 35.3
Cal	4	21.4 to 65.9
	26	25.0 to 34.8
	49	All
DN	101	0.0 to 2.6 12.5 to 22.5
	199	15.0 to 36.4
ED	50	15.0 to 80.4
	193	13.0 to 27.0
Hum	36	25.0 to 47.9
	101	128.0 to 135.0
	299	14.3 to 34.1
Iny	136	None
	190	None
	395	73.0 to 129.4
	Other	All
Ker	5	0.0 to 10.0
	58	77.0 to 108.0
	155	40.0 to 71.3
	168	40.0 to 65.9
Las	All	All
LA	2	38.4 to 82.3
	5	81.5 to 88.6
	14	34.0 to 59.5
Mad	41	32.0 to 44.0
Mpa	140	11.0 to 51.8
	Other	All
Men	101	83.0 to 100.0
	208	6.0 to 14.7
Mod	All	All
Mno	Other	All

County	Route	Post mile limits
Nev	All	All
Pla	80	17.5 to 69.8
	Other	All
Plu	All	All
Riv	10	0.0 to 19.0
	60	20.0 to 30.5
	62	7.3 to 9.2
	74	49.0 to 84.0
	79	31.3 to 40.5
SBd	Other	All
	10	34.0 to 39.2
	15	13.0 to 32.0 147.0 to 186.2
	18	7.0 to 73.8
	38	15.0 to 59.4
	40	70.0 to 90.0
	62	0.0 to 48.0
	247	0.0 to 42.0
	330	29.5 to 44.2
	Other	All
SD	8	35.0 to 77.8
Sha	5	15.4 to 65.6
	36	0.0 to 8.7
	273	16.1 to 20.0
Sie	Other	All
	All	All
Sis	All	All
Teh	32, 89, 172	All
Tri	All	All
Tul	190	32.8 to 57.5
Tuo	120	8.8 to 56.5
	Other	All
Yub	49	All

1-1.07 PAVEMENT CLIMATE REGIONS

For a detailed map, go to the Department's Pavement Web site.



1-1.08 WEB SITES, ADDRESSES, AND TELEPHONE NUMBERS

Web Sites, Addresses, and Telephone Numbers			
Agency or Department unit	Web site	Address	Telephone no.
Bid Document Unit		MSC 26 BID DOCUMENT UNIT DEPARTMENT OF TRANSPORTATION 1120 N ST RM 200 SACRAMENTO CA 95814-5605	
Department	www.dot.ca.gov		
Department of General Services, Office of Small Business and DVBE Services	www.pd.dgs.ca.gov/smbus/default.htm	OFFICE OF SMALL BUSINESS AND DVBE SERVICES DEPARTMENT OF GENERAL SERVICES 707 3RD ST WEST SACRAMENTO CA 95605-2811	(800) 559-5529 (916) 375-4940
Department of Industrial Relations	www.dir.ca.gov		
Department of Industrial Relations, Division of Apprenticeship Standards		455 GOLDEN GATE AVENUE SAN FRANCISCO, CA 94102	
Office Engineer		MSC 43 OFFICE ENGINEER DEPARTMENT OF TRANSPORTATION 1727 30TH ST SACRAMENTO CA 95816-7005	
Offices of Structure Design, Documents Unit		MSC 9-4/I DOCUMENTS UNIT OFFICES OF STRUCTURE DESIGN DEPARTMENT OF TRANSPORTATION 1801 30TH ST SACRAMENTO CA 95816-7006	(916) 227-0716
Publication Distribution Unit		PUBLICATION UNIT DEPARTMENT OF TRANSPORTATION 1900 ROYAL OAKS DRIVE SACRAMENTO CA 95815-3800	
Transportation Laboratory		MATERIALS ENGINEERING AND TESTING SERVICES AND GEOTECHNICAL SERVICES DEPARTMENT OF TRANSPORTATION 5900 FOLSOM BLVD SACRAMENTO CA 95819-4612	(916) 227-7000

2 BIDDING

2-1.01 GENERAL

Section 2 includes specifications related to bid eligibility and the bidding process.

2-1.02 BID INELIGIBILITY

A firm that has provided architectural or engineering services to the Department for this Contract before bid submittal for this Contract is prohibited from any of the following:

1. Submitting a bid
2. Subcontracting for a part of the work
3. Supplying materials

2-1.03 BID DOCUMENTS

2-1.03A General

Standard Specifications and *Standard Plans* may be viewed at the Department's Web site and may be purchased at the Publication Distribution Unit.

The *Notice to Bidders* and *Special Provisions* and project plans may be viewed at:

1. Department's Web site
2. District office of the district in which the work is located
3. Districts 4 and 12 offices
4. Bid Document Unit

For an informal-bid contract, the *Notice to Bidders* and *Special Provisions* and project plans may be viewed at:

1. Department's Web site
2. Bid Document Unit

Bid books, *Notice to Bidders* and *Special Provisions*, and project plans may be obtained at the Bid Document Unit. The *Notice to Bidders* and *Special Provisions* includes the *Notice to Bidders*, revised standard specifications, and special provisions. To expedite orders, you may obtain these documents by faxing an order to (916) 654-7028. Include credit card charge number, card expiration date, and authorizing signature with your order.

2-1.03B Supplemental Project Information

The Department makes supplemental information available as specified in the special provisions.

Logs of test borings are supplemental project information.

The *Information Handout* may be viewed and obtained at the Bid Document Unit.

If rock cores are available, you may view them by sending a request to Coreroom@dot.ca.gov.

Make your request at least 7 days before viewing. Include in your request:

1. District-County-Route
2. Bridge number
3. Contract number
4. Viewing date
5. Contact information, including telephone number

If bridge as-built drawings are available:

1. For a project in District 1 through 6 or 10, you may request them from the Office of Structure Maintenance and Investigations, fax (916) 227-8357
2. For a project in District 7, 8, 9, 11, or 12, you may request them from the Office of Structure Maintenance and Investigations, fax (916) 227-8357, and are available at the Office of Structure Maintenance and Investigations, Los Angeles, CA, telephone (213) 897-0877

As-built drawings may not show existing dimensions and conditions. Where new construction dimensions are dependent on existing bridge dimensions, verify the field dimensions and adjust dimensions of the work to fit existing conditions.

2-1.04 SMALL BUSINESS ENTERPRISE GOAL

The Department has established an overall small business participation goal of 25 percent. To determine whether the goal is achieved, the Department is tracking small business participation on all contracts.

A contractor, subcontractor, supplier, or service provider who qualifies as a small business is encouraged to apply for certification as a small business by submitting its application to the Department of General Services, Office of Small Business and DVBE Services.

2-1.05 DISADVANTAGED BUSINESS ENTERPRISES (49 CFR 26)

Section 2-1.05 applies to a federal-aid contract.

Under 49 CFR 26.13(b):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

In order to ensure the Department achieves its federally mandated statewide overall DBE goal, the Department encourages the participation of DBEs as defined in 49 CFR 26.

2-1.06–2-1.07 RESERVED

2-1.08 DISABLED VETERAN BUSINESS ENTERPRISES

2-1.08A General

Section 2-1.08 applies to a non-Federal-aid contract.

Take necessary and reasonable steps to ensure that DVBEs have opportunity to participate in the Contract.

Comply with Mil & Vet Code § 999 et seq.

2-1.08B No Goal

Section 2-1.08B applies if no DVBE goal is shown in the *Notice to Bidders*.

The Department encourages bidders to obtain DVBE participation in order to ensure the Department achieves its State-mandated overall DVBE goal.

2-1.08C Goal

Section 2-1.08C applies if a DVBE goal is shown in the *Notice to Bidders*.

Make work available to DVBEs and select work parts consistent with available DVBE subcontractors and suppliers.

Meet the goal shown or demonstrate that you made good faith efforts to meet this goal.

2-1.09 SMALL BUSINESS AND NON–SMALL BUSINESS SUBCONTRACTOR PREFERENCES (GOVT CODE § 14835 ET SEQ. AND 2 CA CODE OF REGS § 1896 ET SEQ.)

2-1.09A General

Section 2-1.09 applies to a non-federal-aid contract.

2-1.09B Small Business Preference

The Department allows a bidder certified as a small business by the Office of Small Business and DVBE Services, Department of General Services, a preference if:

1. You completed a *Request for Small Business Preference or Non–Small Business Preference* form

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2. You attached a copy of your Office of Small Business and DVBE Services small business certification to the form
3. The low bidder is not certified as a small business

Your signature on the *Request for Small Business Preference or Non–Small Business Preference* form certifies that you are certified as a small business at the time and day of bid or you have submitted a complete application to the Department of General Services. The complete application and any required substantiating documentation must be received by the Department of General Services by 5:00 p.m. on bid opening date.

The Department of General Services determines whether a bidder is certified on bid opening date. The Department checks the bidder's certification as a small business before applying the small business preference.

The small business preference is a reduction for bid comparison in the total bid submitted by the small business subcontractor by the lesser of:

1. 5 percent of the total bid of the low bidder
2. \$50,000

If this reduction results in the small business contractor becoming the low bidder, the Contract award is based on the total bid, not the reduced bid.

2-1.09C Non–Small Business Subcontractor Preference

The Department allows a bidder not certified as a small business by the Office of Small Business and DVBE Services, Department of General Services, a preference if:

1. You completed a *Request for Small Business Preference or Non–Small Business Preference* form
2. The apparent low bidder is not certified as a small business and has not requested preference
3. The *Certified Small Business Listing for the Non–Small Business Preference* form shows that you are subcontracting at least 25 percent to certified small businesses

The non–small business subcontractor preference is a reduction for bid comparison in the total bid submitted by the non–small business contractor requesting the preference by the lesser of:

1. 5 percent of the total bid of the low bidder
2. \$50,000

If this reduction results in the non–small business contractor becoming the low bidder or a tie with a non–small business low bidder not requesting the preference, the Contract award is based on the total bid, not the reduced bid.

A non–small business bidder does not displace a small business bidder.

2-1.10 DISABLED VETERAN BUSINESS ENTERPRISE INCENTIVE EVALUATION

Section 2-1.10 applies to a non-federal-aid contract.

The Department applies the small business and non–small business preference during bid verification and proceeds with the following evaluation for DVBE incentive:

1. The Department grants a DVBE incentive to each bidder who achieves a DVBE participation of at least 1 percent of its total bid (Mil & Vet Code § 999 et seq. and 2 CA Code of Regs § 1896.98 et seq.).
2. The DVBE incentive is a reduction for bid comparison in the total bid submitted by the lesser of:
 - 2.1. Percentage of DVBE achievement rounded off to 2 decimal places of the total bid of the low bidder
 - 2.2. 5 percent of the total bid of the low bidder
 - 2.3. \$100,000

The Department applies the DVBE incentive and determines whether bid ranking changes.

A non–small business bidder does not displace a small business bidder. However, a small business bidder with higher DVBE achievement displaces another small business bidder.

The Department proceeds with awarding the Contract to the reevaluated apparent low bidder and posts the reevaluated verified bid results at the Department's Web site.

2-1.11 RESERVED

2-1.12 PREFERENCE HIERARCHY

Section 2-1.12 applies to a non-federal-aid contract.

If a small business bidder and a non–small business bidder request preferences and the reductions result in a tied bid, the Department awards the Contract to the small business bidder.

If a DVBE bidder and a non-DVBE bidder request preferences and the reduction results in a tied bid, the Department awards the Contract to the DVBE bidder.

2-1.13 CALIFORNIA COMPANIES

Under Pub Cont Code § 6107, the Department gives preference to a "California company," as defined, for bid comparison purposes over a nonresident contractor from any state that gives or requires a preference to be given contractors from that state on its public entity construction contracts.

Complete a *California Company Preference* form.

The California company reciprocal preference amount is equal to the preference amount applied by the state of the nonresident contractor with the lowest responsive bid unless the California company is eligible for a small business preference or a non–small business subcontractor preference; in which case the preference amount is the greater of the two, but not both.

If the low bidder is not a California company and a California company's bid with reciprocal preference is equal to or less than the lowest bid, the Department awards the Contract to the California company on the basis of its total bid, not the reduced bid used for comparison except as specified in section 2-1.12 <Preference Hierarchy>.

2-1.14–2-1.15 RESERVED

2-1.16 JOB SITE AND DOCUMENT EXAMINATION

Examine the job site and bid documents.

Bid submission is your acknowledgment that you have examined the job site and bid documents and are satisfied with:

1. General and local conditions to be encountered
2. Character, quality, and scope of work to be performed
3. Quantities of materials to be furnished
4. Character, quality, and quantity of surface and subsurface materials or obstacles
5. Requirements of the Contract

2-1.17–2-1.18 RESERVED

2-1.19 BID DOCUMENT COMPLETION

2-1.19A General

For hard-copy bids, complete forms in the Bid book. Submit the forms with your bid except:

1. For the following 2 forms for non-federal-aid non-informal-bid contracts:
 - 1.1. *Certified DVBE Summary* and *DVBE - Good Faith Efforts* forms. You may submit these forms with your bid. If you do not and you are the low bidder or the second or third low bidder, submit them so that they are received at the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening. If a DVBE joint venture is used, submit the joint venture agreement with the *Certified DVBE Summary* form. Other bidders may be required to submit these forms if bid ranking changes.
 - 1.2. *Certified Small Business Listing for the Non–Small Business Preference* form. If you are applying for the non–small business subcontractor preference, you may submit this information with your bid. If you do not, submit it so that it is received at the Office Engineer no later than

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4:00 p.m. on the 2nd business day after bid opening. The listed subcontractor and supplier must be certified as a small business at the time and day of bid or must have submitted a complete application to the Department of General Services. The complete application and any required substantiating documentation must be received by the Department of General Services no later than 5:00 p.m. on the bid opening date.

2. On the *Subcontractor List* you may either submit the percentage of each bid item subcontracted with your bid or fax the percentage to (916) 227-6282 within 24 hours after bid opening.

Except for the percentage of each bid item subcontracted, do not fax submittals.

For electronic bids, follow the instructions in *Electronic Bid Instructions* at the Department's Web site.

The Department determines a bidder has made good faith efforts if it submits evidence that it:

1. Contacted the Office of Small Business and DVBE Services, Department of General Services
2. Advertised in the trade media and media focusing on DVBEs unless time limits the Department imposes do not allow the advertising
3. Submitted invitations to bid to potential DVBE contractors
4. Considered available DVBEs

2-1.19B Bid Item List and Bid Comparison

Submit a bid based on the work item quantities the Department shows on the *Bid Item List*.

For a lump sum based bid, the Department compares bids based on the total price.

For a unit price based bid, the Department compares bids based on the sum of the item totals.

For a cost plus time based bid, the Department compares bids based on the sum of the item totals and the total bid for time.

2-1.19C Subcontractor List

On the *Subcontractor List*, list each subcontractor to perform work:

1. In an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.).
2. That is a 1st tier DVBE subcontractor regardless of percentage of the total bid

The *Subcontractor List* must show the name, address, and work portions to be performed by each subcontractor listed. Show work portions by bid item number, description, and percentage of each bid item subcontracted.

2-1.20 BIDDER'S SECURITY

Submit your bid with one of the following forms of bidder's security equal to at least 10 percent of the bid:

1. Cash
2. Cashier's check
3. Certified check
4. Bidder's bond signed by a surety insurer who is licensed in California

If using a bidder's bond, you may use the form in the *Bid* book. If you do not use the form in the *Bid* book, use a form containing the same information.

2-1.21–2-1.22 RESERVED

2-1.23 BID SUBMITTAL

For a hard-copy bid, submit your bid:

1. Under sealed cover
2. Marked as a bid
3. Identifying the Contract number and the bid opening date

If an agent other than the authorized corporation officer or a partnership member signs the bid, file a Power of Attorney with the Department either before opening bids or with the bid. Otherwise, the bid may be nonresponsive.

For an electronic bid, submit your bid under the *Electronic Bid Instructions* at the Department's Web site.

2-1.24 RESERVED

2-1.25 BID WITHDRAWAL

An authorized agent may withdraw a bid before the bid opening date and time by submitting a written bid withdrawal request at the location where the bid was submitted. Withdrawing a bid does not prevent you from submitting a new bid.

After the bid opening time, you cannot withdraw a bid.

2-1.26 BID OPENING

The Department publicly opens and reads bids at the time and place described in the *Notice to Bidders*.

2-1.27 BID REJECTION

The Department may reject:

1. All bids
2. A nonresponsive bid

2-1.28 BID RELIEF

The Department may grant bid relief under Pub Cont Code § 5100 et seq. Submit any request for bid relief to the Office Engineer. The *Relief of Bid Request* form is available at the Department's Web site.

2-1.29 SUBMITTAL FAILURE HISTORY

The Department considers a bidder's past failure to submit documents required after bid opening in determining a bidder's responsibility.

2-1.30 BID RIGGING

Section 2-1.30 applies to a federal-aid contract.

The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available Monday through Friday between 11:00 a.m. and 8:00 p.m. and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

3 CONTRACT AWARD AND EXECUTION

3-1.01 GENERAL

Section 3 includes specifications related to Contract award and execution.

3-1.02–3-1.03 RESERVED

3-1.04 CONTRACT AWARD

Submit any bid protest to the Office Engineer.

If the Department awards the contract, the award is made to the lowest responsible bidder within the number of days shown in the following table:

Contract Award Period	
Days	Project estimated cost shown on the <i>Notice to Bidders</i>
30	< \$200 million
60	> \$200 million

The Department may extend the specified award period if the bidder agrees.

3-1.05 CONTRACT BONDS (PUB CONT CODE §§ 10221 AND 10222)

The successful bidder must furnish 2 bonds:

1. Payment bond to secure the claim payments of laborers, workers, mechanics, or materialmen providing goods, labor, or services under the Contract. This bond must be equal to at least 100 percent of the total bid.
2. Performance bond to guarantee the faithful performance of the Contract. This bond must be equal to at least 50 percent of the total bid.

The Department furnishes the successful bidder with bond forms.

3-1.06 CONTRACTOR LICENSE

For a federal-aid contract, the Contractor must be properly licensed as a contractor from Contract award through Contract acceptance (Pub Cont Code § 10164).

For a non-federal-aid contract:

1. The Contractor must be properly licensed as a contractor from bid opening through Contract acceptance (Bus & Prof Code § 7028.15)
2. Joint venture bidders must obtain a joint venture license before Contract award (Bus & Prof Code § 7029.1)

3-1.07 INSURANCE POLICIES

The successful bidder must submit:

1. Copy of its commercial general liability policy and its excess policy or binder until such time as a policy is available, including the declarations page, applicable endorsements, riders, and other modifications in effect at the time of contract execution. Standard ISO form No. CG 0001 or similar exclusions are allowed if not inconsistent with section 7-1.06 <Insurance>. Allowance of additional exclusions is at the discretion of the Department.
2. Certificate of insurance showing all other required coverages. Certificates of insurance, as evidence of required insurance for the auto liability and any other required policy, shall set forth deductible amounts applicable to each policy and all exclusions that are added by endorsement to each policy. The evidence of insurance shall provide that no cancellation, lapse, or reduction of coverage will occur without 10 days prior written notice to the Department.
3. A declaration under the penalty of perjury by a CPA certifying the accountant has applied GAAP guidelines confirming the successful bidder has sufficient funds and resources to cover any self-insured retentions if the self-insured retention is \$50,000 or higher.

If the successful bidder uses any form of self-insurance for workers compensation in lieu of an insurance policy, it shall submit a certificate of consent to self-insure under Labor Code § 3700.

3-1.08 SMALL BUSINESS PARTICIPATION REPORT

Complete and sign the a *Small Business Participation Report* form included in the Contract documents even if no small business participation is reported.

3-1.09–3-1.10 RESERVED

3-1.11 PAYEE DATA RECORD

Complete and sign the *Payee Data Record* form included in the Contract documents.

3-1.12 CALTRANS BIDDER - DBE INFORMATION FORM

Section 3-1.12 applies to a federal-aid contract.

Complete and sign the *Caltrans Bidder - DBE Information* form included in the Contract documents even if no DBE participation is reported.

Provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, the Department encourages you to submit a copy of the joint venture agreement.

3-1.13–3-1.17 RESERVED

3-1.18 CONTRACT EXECUTION

The successful bidder must sign the Contract.

Deliver to the Office Engineer:

1. Signed *Contract* form
2. Contract bonds
3. Documents identified in section 3-1.07 *<Insurance Policies>*
4. *Small Business Participation Report*
5. Payee data record
6. For a federal-aid contract, *Caltrans Bidder - DBE Information* form

For an informal-bid contract, the Office Engineer must receive these documents before the 5th business day after the bidder receives the Contract.

For all other contracts, the Office Engineer must receive these documents before the 10th business day after the bidder receives the Contract.

The bidder's security may be forfeited for failure to execute the Contract within the time specified (Pub Cont Code §§ 10181, 10182, and 10183).

The following is a copy of the *Contract* form:

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
CONTRACT
DES-OE-0103A (NEW 3/2008)



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
CONTRACT NO. _____

This contract is entered into between the State of California's Department of Transportation and the Contractor named below:

CONTRACTOR'S NAME

The parties agree to comply with the terms of the following exhibits that are by this reference made a part of this contract.

Exhibit A - Bid book dated _____

Exhibit B - Notice to Bidders and Special Provisions dated _____

Exhibit C - Project Plans approved _____

Exhibit D - Standard Specifications dated _____

Exhibit E - Standard Plans dated _____

Exhibit F - Addenda

Exhibits A, B, C, and F are those exhibits identified with the same contract number as this contract.

This contract has been executed by the following parties:

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

FEDERAL EMPLOYER IDENTIFICATION NUMBER

DEPARTMENT OF TRANSPORTATION

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

3-1.19 BIDDERS' SECURITIES

The Department keeps the securities of the 1st, 2nd, and 3rd low bidders until the Contract has been executed. The other bidders' securities, other than bidders' bonds, are returned upon determination of the 1st, 2nd, and 3rd low bidders, and their bidders' bonds are of no further effect (Pub Cont Code § 10184).

4 SCOPE OF WORK

4-1.01 GENERAL

Section 4 includes specifications related to the scope of work.

4-1.02 INTENT

The Contract intent is to provide for work completion using the best general practices.

Nothing in the specifications voids the Contractor's public safety responsibilities.

4-1.03 PROJECT DESCRIPTION

Construct the work described in the *Notice to Bidders* and by the bid items. The bid item descriptions set forth the specifications that apply. The first 2 digits of a bid item corresponds to the specification section with the same 2 digits except as shown in the table titled "Bid Items and Applicable Sections" in the special provisions.

4-1.04 USE OF MATERIALS FOUND ON THE JOB SITE

You may use aggregate or other materials found in excavation that comply with the specifications. The Department pays for the material excavated at the excavation item Contract price. Replace the quantity of material removed and used that was designated for use in the work with an equal quantity of material. Except for material used as structure backfill, the Department does not pay for replacing the material. The Department pays for excavated material replacement used for structure backfill at the Contract price for structure backfill. Do not excavate material from outside the excavation's slope and grade lines without authorization.

4-1.05 CHANGES

4-1.05A General

The Department may make changes within the scope of work. The Engineer describes the changes, the payment basis, and a time adjustment, if any, in a *Change Order*.

A *Change Order* is approved when the Department signs the *Change Order*.

Submit detailed cost data for a payment adjustment for:

1. Request for a payment adjustment for a bid item
2. Payment adjustment resulting from a change of more than 25 percent in the bid item's quantity if requested

If ordered, start the work before receipt of an approved *Change Order*.

You may protest a *Change Order* by:

[Guidance from Construction required.]

4-1.05B Work-Character Changes

The Department adjusts payment for an item if:

1. An ordered drawing or specification change materially changes the character of a work item from that on which the bid price was based
2. The unit cost of the changed item differs when compared to the unit cost of that item under the original plans and specifications
3. No approved *Change Order* addresses the payment

4-1.06 DIFFERING SITE CONDITIONS (23 CFR 635.109)

4-1.06A General

Reserved

4-1.06B Contractor's Notification

Promptly notify the Engineer if you find either of the following:

1. Physical conditions differing materially from either of the following:

- 1.1. Contract documents
- 1.2. Job site examination
2. Physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract

Include details explaining the information you relied on and the material differences you discovered.

If you fail to promptly notify the Engineer, you waive the differing site condition claim for the period between your discovery of the differing site condition and your notification to the Engineer.

If you disturb the site after discovery and before the Engineer's investigation, you waive the differing site condition claim.

4-1.06C Engineer's Investigation and Decision

Upon your notification, the Engineer investigates job site conditions and:

1. Notifies you whether to resume affected work
2. Decides whether the condition differs materially and is cause for an adjustment of time, payment, or both

4-1.06D Protests

You may protest the Engineer's decision by:

[Guidance from Construction required.]

4-1.07 VALUE ENGINEERING

4-1.07A General

Reserved

4-1.07B Value Engineering Change Proposal

You may submit a VECP to reduce any of the following:

1. Total cost of construction
2. Construction activity duration
3. Traffic congestion

Before preparing a VECP, meet with the Engineer to discuss:

1. Proposal concept
2. Permit issues
3. Impact on other projects
4. Project impacts, including traffic, schedule, and later stages
5. Peer reviews
6. Overall proposal merits
7. Review times required by the Department and other agencies

The VECP must not impair the project's essential functions or characteristics, including:

1. Service life
2. Operation economy
3. Maintenance ease
4. Desired appearance
5. Design and safety

The VECP must include:

1. Description of the Contract specifications and drawing details for performing the work and the proposed changes.
2. Itemization of Contract specifications and drawing details that would be changed.
3. Detailed cost estimate for performing the work under the existing Contract and under the proposed change. Determine the estimates under section 9-1.04 **<Force Account>**.

4. Deadline for the Engineer to decide on the changes.
5. Bid items affected and resulting quantity changes.

The Department is not required to consider a VECP. If a VECP is similar to a change in the plans or specifications being considered by the Department at the time the proposal is submitted or if the proposal is based on or similar to plans or specifications adopted by the Department before Contract award, the Department does not accept the VECP and may make these changes without VECP payments.

Until the Department approves a *Change Order* incorporating the VECP or parts of it, continue to perform the work under the Contract. If the Department does not approve a *Change Order* before the deadline stated in the VECP or other date you subsequently stated in writing, the VECP is rejected. The Department does not adjust time or payment for a rejected VECP.

The Department decides whether to accept a VECP and the estimated net construction-cost savings from adopting the VECP or parts of it.

The Department may require you to accept a share of the investigation cost as a condition of reviewing a VECP. After written acceptance, the Department considers the VECP and deducts the agreed cost.

If the Department accepts the VECP or parts of it, the Department issues a *Change Order* that:

1. Incorporates changes in the Contract necessary to implement the VECP or the parts adopted
2. Includes the Department's acceptance conditions
3. States the estimated net construction-cost savings resulting from the VECP
4. Obligates the Department to pay you 50 percent of the estimated net savings

In determining the estimated net construction-cost savings, the Department excludes your VECP preparation cost and the Department's VECP investigation cost, including parts paid by you.

If a VECP providing for a reduction in working days is accepted by the Department, 50 percent of the reduction is deducted from Contract time.

If a VECP providing for a reduction in traffic congestion or avoiding traffic congestion is accepted by the Department, the Department pays 60 percent of the estimated net savings in construction costs attributable to the VECP. Submit detailed traffic handling comparisons between the existing Contract and the proposed change, including estimates of the traffic volumes and congestion.

The Department may apply an accepted VECP for general use on other contracts.

If an accepted VECP is adopted for general use, the Department pays only the contractor who first submitted the VECP and only to the contracts awarded to that contractor before the submission of the accepted VECP.

If the Department does not adopt a general-use VECP, an identical or similar submitted proposal is eligible for acceptance.

4-1.07C Value Analysis Workshop

Section 4-1.07C applies to a non-building-construction contract with a total bid of over \$5 million.

You may request a value analysis workshop by submitting a request after Contract approval.

The Department offers a value analysis workshop to:

1. Identify value enhancing opportunities
2. Consider changes to the Contract that will reduce the total cost of construction, construction activity duration, or traffic congestion without impairing the essential functions specified for a VECP in section 4-1.07B <Value Engineering Change Proposal>.

If the request is authorized, you and the Engineer:

1. Schedule a value analysis workshop
2. Select a facilitator and workshop site
3. Agree to other workshop administrative details

The workshop must be conducted under the methods described in the Department's *Value Analysis Team Guide*. For the guide, go to the Department's Division of Design Web site.

The facilitator must be a certified value specialist as recognized by the Society of American Value Engineers.

The Department reimburses you for 1/2 of the workshop cost. The workshop cost is the sum of the workshop-facilitator cost and the workshop-site cost. The Department determines the workshop cost based on the facilitator and workshop-site invoice prices minus any available or offered discounts. The Department does not pay you for any other associated costs.

4-1.08–4-1.12 RESERVED

4-1.13 CLEANUP

Before final inspection, leave the job site neat and presentable and dispose of:

1. Rubbish
2. Excess materials
3. Falsework
4. Temporary structures
5. Equipment

Do not remove warning, regulatory, or guide signs until Contract acceptance.

5 WORK CONTROL

5-1.01 GENERAL

Section 5 includes specifications regarding the Contract parties' relations and Contract acceptance.

Furnish the resources, except Department-furnished materials, required to complete the work as described in the Contract.

If not described in the Contract, choose the means and methods to complete the work.

Where the Contract describes more than 1 construction method or more than 1 type of material or equipment, the Department does not assure that each construction method or type of material or equipment can be used successfully throughout all or any part of the project. You are responsible to use the alternative or alternatives that will accomplish the work under the conditions encountered.

Failure to comply with any Contract part is a waiver of your right to an adjustment of time and payment related to that part.

After Contract approval, submit documents and direct questions to the Engineer. Orders, authorizations, certifications, and requests to the Contractor are by the Engineer.

The Department furnishes the following in writing:

1. Authorizations
2. Approvals
3. Certifications
4. Notifications
5. Orders

The Contractor must furnish the following in writing:

1. Assignments
2. Notifications
3. Proposals
4. Reports
5. Requests, sequentially numbered
6. Subcontracts
7. Test results

The time allowed for the review of a submittal starts when the Engineer receives the submittal.

The Department rejects a submittal if it has any error or any omission.

Convert foreign language documents to English and U.S. customary units.

Use contract administration forms at the Department's Web site.

If the last day for submitting a document falls on a Saturday or holiday, it may be submitted on the next business day with the same effect as if it had been submitted on the day specified.

5-1.02 CONTRACT COMPONENTS

A component in one Contract part applies as if appearing in each. The parts are complementary and describe and provide for a complete work.

If a discrepancy exists:

1. The governing ranking of Contract parts in descending order is:
 - 1.1. Special provisions
 - 1.2. Project plans
 - 1.3. Revised standard specifications
 - 1.4. Standard specifications
 - 1.5. Revised standard plans
 - 1.6. Standard plans
 - 1.7. Supplemental project information

2. Written numbers and notes on a drawing govern over graphics
3. A detail drawing governs over a general drawing
4. A detail specification governs over a general specification
5. A specification in a section governs over a specification referenced by that section

If a discrepancy is found or confusion arises, submit a request for information.

5-1.03 ENGINEERS AUTHORITY

The Engineer makes the final decision on questions regarding the Contract, including:

1. Work quality and acceptability
2. Drawing and specification interpretation
3. Contract fulfillment
4. Time and progress rate
5. Payment

The Engineer has the authority to enforce or fulfill an order that you fail to fulfill promptly.

Failure to enforce a Contract part does not waive enforcement of any Contract provision.

The Engineer may reject noncompliant work at any time, including after a payment has been made.

5-1.04 PARTNERING

5-1.04A General

The Department strives to work cooperatively with all contractors; partnering is our way of doing business. The Department encourages project partnering among the project team made up of significant contributors from the Department and the Contractor and their invited stakeholders.

For a project with a total bid greater than \$1 million, professionally facilitated project partnering is encouraged.

For a project with a total bid greater than \$10 million, professionally facilitated project partnering is required.

In implementing project partnering, you and the Engineer manage the Contract by:

1. Using early and regular communication with involved parties
2. Establishing and maintaining a relationship of shared trust, equity, and commitment
3. Identifying, quantifying, and supporting attainment of mutual goals
4. Developing strategies for using risk management concepts
5. Implementing timely communication and decision making
6. Resolving potential problems at the lowest possible level to avoid negative impacts
7. Holding periodic partnering meetings and workshops as appropriate to maintain partnering relationships and benefits throughout the life of the project
8. Establishing periodic joint evaluations of the partnering process and attainment of mutual goals

Partnering does not void any contract part.

The Department's *Field Guide to Partnering on Caltrans Construction Projects* is available to the project team as reference. This guide provides structure, context, and clarity to the partnering process requirements. This guide is available at the Department's Web site.

In implementing project partnering, the project team must:

1. Create a partnering charter that includes:
 - 1.1. Mutual goals, including core project goals and may also include project-specific goals and mutually supported individual goals
 - 1.2. Partnering maintenance and close-out plan
 - 1.3. Dispute resolution plan that includes a dispute resolution ladder and may also include use of facilitated dispute resolution sessions
 - 1.4. Team commitment statement and signatures

2. Participate in monthly partnering evaluation surveys to measure progress on mutual goals and may also measure short-term key issues as they arise
3. Evaluate the partnering facilitator on the *Partnering Facilitator Evaluation* forms. The Engineer provides the evaluation forms to the project team and collects the results. The Department makes evaluation results available upon request. Facilitator evaluations must be completed at the end of:
 - 3.1. Initial partnering workshop
 - 3.2. Project close-out partnering workshop
4. Conduct a project close-out partnering workshop
5. Document lessons learned before contract acceptance

5-1.04B Partnering Facilitator, Workshops, and Monthly Evaluation Surveys

The Engineer sends you a written invitation to enter into a partnering relationship after Contract approval. Respond within 15 days to accept the invitation and request the initial and additional partnering workshops. After the Engineer receives the request, you and the Engineer cooperatively:

1. Select a partnering facilitator that offers the service of a monthly partnering evaluation survey with a 5-point rating and agrees to follow the *Department's Partnering Facilitator Standards and Expectations* available at the Department's Partnering Program Web site
2. Schedule initial partnering workshop
3. Determine initial workshop site and duration
4. Agree to other workshop administrative details

Additional partnering workshops and sessions are encouraged throughout the life of the project as determined necessary by you and the Engineer, recommended quarterly.

5-1.04C Training in Partnering Skills Development

For a project with a total bid of \$25 million or greater, training in partnering skills development is required.

For a project with a total bid between \$10 million and \$25 million, training in partnering skills is optional.

You and the Engineer cooperatively schedule the training session and select a professional trainer, training site, and 1 to 4 topics from the following list to be covered in the training:

- | | |
|----------------------------------|-------------------------------------|
| 1. Active listening | 12. Ethics |
| 2. Building teams | 13. Facilitation skills |
| 3. Change management | 14. Leadership |
| 4. Communication | 15. Partnering process and concepts |
| 5. Conflict resolution | 16. Project management |
| 6. Cultural diversity | 17. Project organization |
| 7. Dealing with difficult people | 18. Problem solving |
| 8. Decision making | 19. Running effective meetings |
| 9. Effective escalation ladders | 20. Time management |
| 10. Emotional intelligence | 21. Win-win negotiation |
| 11. Empathy | |

Before the initial partnering workshop, the trainer conducts a 1-day training session in partnering skills development for the Contractor's and the Engineer's representatives. This training session must be a separate session from the initial partnering workshop and must be conducted locally. The training session must be consistent with the partnering principles under the Department's *Field Guide to Partnering on Caltrans Construction Projects*.

Send at least 2 representatives to the training session. One of these must be your assigned representative specified in section 5-1.07 **<Representative, Quality Control Manager, and Workers>**.

5-1.04D Payment

The Department pays you for:

1. 1/2 of partnering workshops and sessions based on facilitator and workshop site cost
2. 1/2 of monthly partnering evaluation survey service cost
3. Partnering skills development trainer and training site cost

The Department determines the costs based on invoice prices minus any available or offered discounts. The Department does not pay markups on these costs.

The Department does not pay for wages, travel expenses, or other costs associated with the partnering workshops and sessions, monthly partnering evaluation surveys, and training in partnering skills development.

5-1.05 ASSIGNMENT

No third-party agreement relieves you or your surety of the responsibility to complete the work. Do not sell, transfer, or otherwise dispose of any Contract part without prior written consent from the Department.

If you assign the right to receive Contract payments, the Department accepts the assignment upon the Engineer's receipt of a notice. Assigned payments remain subject to deductions and withholds described in the Contract. The Department may use withheld payments for work completion whether payments are assigned or not.

5-1.06 SUBCONTRACTING

5-1.06A General

No subcontract releases you from the Contract or relieves you of your responsibility for a subcontractor's work.

If you violate Pub Cont Code § 4100 et seq., the Department may exercise the remedies provided under Pub Cont Code § 4110. The Department may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

Except for a building-construction non-federal-aid contract, perform work equaling at least 30 percent of the value of the original total bid with your employees and with equipment owned or rented by you, with or without operators.

Each subcontract must comply with the Contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code § 7000 et seq.).

Submit copies of subcontracts upon request.

Before subcontracted work starts, submit a *Subcontracting Request* form.

Do not use a debarred contractor; for a list of debarred contractors, go to the Department of Industrial Relations' Web site.

Upon request, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

5-1.06B Disadvantaged Business Enterprises

Section 5-1.06B applies to a federal-aid contract.

Use each subcontractor as listed on the *Subcontractor List* form unless you receive authorization for a substitution.

You must:

1. Notify the Engineer of any changes to your anticipated DBE participation
2. Provide this notification before starting the affected work

Maintain records including:

1. Name and business address of each 1st-tier subcontractor
2. Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
3. Date of payment and total amount paid to each business

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If you are a DBE contractor, include the date of work performed by your own forces and the corresponding value of the work.

Before the 15th of each month, submit a *Monthly DBE Trucking Verification* form.

For a DBE that leases trucks from a non-DBE, count only the fee or commission the DBE receives as a result of the lease arrangement.

If a DBE subcontractor is decertified before completing subcontracted work, the subcontractor must notify you in writing of the decertification date. If a subcontractor becomes a certified DBE before completing subcontracted work, the subcontractor must notify you in writing of the certification date. Submit the notifications. On Contract work completion, complete a *Disadvantaged Business Enterprises (DBE) Certification Status Change* form. Submit the form within 90 days of Contract acceptance.

Upon Contract work completion, complete a *Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors* form. Submit it within 90 days of Contract acceptance. The Department withholds \$10,000 until the form is submitted. The Department releases the withhold upon submission of the completed form.

5-1.06C Disabled Veteran Business Enterprises

Section 5-1.06C applies to a non-federal-aid contract.

If a DVBE goal is shown on the *Notice to Bidders* and the Department has approved the DVBE entities listed on the *Certified DVBE Subcontractor Summary* form:

1. Use each DVBE as shown on the *Certified DVBE Summary* form unless you receive authorization for a substitution
2. The requirement that DVBEs be certified by the bid opening date does not apply to DVBE substitutions after Contract award.
3. Maintain records of subcontracts made with DVBEs. Include in the records:
 - 3.1. Name and business address of each business
 - 3.2. Total amount paid to each business
4. For the purpose of determining compliance with Pub Cont Code § 10115 et seq.:
 - 4.1. Provide the Department relevant information requested.
 - 4.2. Upon reasonable notice and during normal business hours, permit access to its premises for the purposes of:
 - 4.2.1. Interviewing employees
 - 4.2.2. Inspecting and copying books, records, accounts and other material that may be relevant to a matter under investigation

5-1.06D Non-Small Businesses

Section 5-1.06D applies to a non-federal-aid contract.

Use each subcontractor as shown on the *Certified Small Business Listing for the Non-Small Business Preference* form unless you receive authorization for a substitution.

The requirement that small businesses be certified by the bid opening date does not apply to small business substitutions after Contract award.

Maintain records of subcontracts made with small business subcontractors and records of materials purchased from certified small business suppliers. Include in the records:

1. Name and business address of each business
2. Total amount paid to each business

For the purpose of determining compliance with 2 CA Code of Regs § 1896 et seq.:

1. Provide the Department relevant information requested.
2. Upon reasonable notice and during normal business hours, permit access to its premises for the purposes of:
 - 2.1. Interviewing employees

- 2.2. Inspecting and copying books, records, accounts and other material that may be relevant to a matter under investigation

5-1.06E–5-1.06I Reserved

5-1.07 REPRESENTATIVE, QUALITY CONTROL MANAGER, AND WORKERS

Before starting work, assign:

1. Representative to:
 - 1.1. Receive the Engineer's orders
 - 1.2. Perform the Engineer's orders
 - 1.3. Supervise the workers
 - 1.4. Coordinate the subcontractors' work
2. QC manager to:
 - 2.1. Sign and submit QC plans
 - 2.2. Implement QC plans
 - 2.3. Submit QC reports and maintain QC records
 - 2.4. Take corrective actions including stopping work and changing the process

While work is not in progress, the representative must submit contact information (name, telephone number) to perform emergency work.

Unless the QC manager is hired by a subcontractor providing only QC services, the QC manager must not be employed or compensated by any subcontractor or by other persons or entities hired by subcontractors who will provide other services or materials for the project. The QC manager may be an employee of the Contractor.

For a location other than the job site, you may assign an assistant QC manager. If a worker appears to the Engineer to be incompetent or acts disorderly or improperly, discharge the worker immediately upon request. Do not employ that worker again on the work.

5-1.08 COORDINATION WITH OTHER ENTITIES

5-1.08A General

Other entities may perform work at or near the job site and material sources at any time. Coordinate activities to avoid delays.

Each contractor or other entity performing work at or near the job or material site is responsible to the other for damage to work, persons, or property and for costs due to unnecessary delays.

5-1.08B Permits, Licenses, Agreements, and Certifications

5-1.08B(1) General

Comply with PLACs. The Department makes PLAC changes under section 4-1.05 [<Changes>](#).

5-1.08B(2) Before Award

To make a change to a PLAC contained in the Information Handout, submit the proposed change. The Department sends the proposed change to the appropriate authority for consideration.

5-1.08B(3) After Award

Confirm with the Engineer which after-award PLACs are obtained by the Department and which are obtained by the Contractor.

To make a change to an after-award PLAC obtained by the Department, submit the proposed change. The Department sends the proposed change to the appropriate authority for consideration.

Obtain those PLACs to be issued to you and pay fees and costs associated with obtaining them. Submit copies of Contractor-obtained after-award PLACs for review.

5-1.08B(4) Contractor–Property Owner Agreement

Before procuring material from or disposing of material on nonhighway property:

1. Submit a written agreement from the property owner:

- 1.1. For property use
- 1.2. Absolving the Department from responsibility in connection with the property
2. Obtain authorization to start

Before Contract acceptance, submit a document signed by the owner of the material source or disposal site stating that the Contractor has complied with the Contractor-owner agreement.

5-1.08C Railroad Relations

Reserved

5-1.09 SUBMITTALS

5-1.09A General

Section 5-1.09 includes specifications for action and informational submittals.

Any submittal not specified as an informational submittal is an action submittal.

5-1.09B Action Submittals

5-1.09B(1) General

Section 5-1.09B applies to shop drawings, product data, samples, test samples, quality control plans, work plans, and material sources.

Maintain a sequential list of submittals except for samples, test samples, and material sources. With each individual submittal, submit a copy of the updated list.

Submit an action submittal before the start of the affected work to allow for review and corrections without work delays.

Except for shop drawings:

1. Allow 15 days for the Engineer's review
2. Obtain acceptance for action submittals before you perform work based on them.

Do not change the scope of work on revised submittals.

5-1.09B(2) Shop Drawings

Submit shop drawings as specified and as otherwise required to control the work. Shop drawings and specified supplemental calculations must be sealed and signed by an engineer who is registered as a civil engineer in the State.

Obtain certification of shop drawings before you perform work based on them. The Engineer's certification does not void any Contract part.

Each drawing and calculation sheet must be in black ink and show:

1. Structure name and number
2. District–County–Route–Post Mile
3. Contract number

Each drawing sheet must:

1. Be 11 by 17 inches
2. Be on minimum of 20 lb paper
3. Have text of minimum nominal height of 5/32 inch

Each calculation sheet must:

1. Be 8-1/2 by 11 inches
2. Have text of a minimum 12-point font

Text and graphics must be legible for photocopying and reduction.

Calculations must demonstrate the design adequacy. Calculations specified as independently checked must be sealed and signed by an engineer who is registered as a civil engineer in the State and who did not seal and sign the drawings.

For complete drawings, allow 20 days for the Engineer's review.

If multiple sets are submitted simultaneously or an additional set is submitted before the review of a previously submitted set is complete, designate the sequence that the sets are to be reviewed. Allow review time specified plus 15 days for each additional set. A set consists of 40 or fewer sheets.

If drawings require corrections, the Engineer:

1. Describes deficiencies
2. Stamps the drawings with the date that the review stopped
3. Returns the drawings

For complete resubmitted drawings, allow 20 days for the Engineer's review. Show set revision number. Uniquely number each revised detail. Show the number in an inverted triangle near the revised portion of the detail. In a legend, describe and date the revision.

Upon review completion, the Engineer returns 1 copy that shows the certified date.

To make a change to a certified drawing, submit it as specified for a new submittal. Note the changes.

After the work shown on the drawings is complete, submit electronic copies of as-built drawings.

5-1.09B(3) Product Data

Reserved

5-1.09B(4) Samples

Reserved

5-1.09B(5) Test Samples

For test samples, comply with section 6-3.04G *<Test Samples>*.

5-1.09B(6) Quality Control Plans

Comply with section 6-3.04J *<Quality Control Plans>*.

5-1.09B(7) Work Plans

Do not perform work based on work plans until the Engineer notifies you they are accepted.

5-1.09C Informational Submittals

Informational submittals include:

1. Certificates of compliance
2. Test and evaluation reports
3. Manufacturer instructions not associated with drawing submittals

5-1.10 CONSTRUCTION SURVEYS

The Department places stakes and marks under Chapter 12, "Construction Surveys," of the Department's *Surveys Manual*.

Submit your request for Department-furnished stakes:

1. Once staking area is ready for stakes
2. On a *Request for Construction Staking* form

After your submittal, the Department starts staking within 2 business days.

Preserve stakes and marks placed by the Department. If the stakes or marks are destroyed, the Department replaces them at the Department's earliest convenience and deducts the cost.

5-1.11 RECORDS

5-1.11A General

Reserved

5-1.11B Record Retention

Retain project records from bid preparation through:

1. Final payment
2. Resolution of claims, if any

For at least 3 years after the later of these, retain cost records, including records of:

1. Bid preparation
2. Overhead
3. Payrolls
4. Payments to subcontractors and suppliers
5. Cost accounting

Maintain the records in an organized way in the original format, electronic and hard copy, conducive to professional review and audit.

5-1.11C Record Inspection, Copying, and Auditing

Make your records available for inspection, copying, and auditing by State representatives for the same time frame specified under section 5-1.11B <Record Retention>. The records of subcontractors and suppliers must be made available for inspection, copying, and auditing by State representatives for the same period. Before Contract acceptance, the State representative notifies the Contractor, subcontractor, or supplier 5 business days before inspection, copying, or auditing.

If an audit is to start more than 30 days after Contract acceptance, the State representative notifies the Contractor, subcontractor, or supplier when the audit is to start.

5-1.11D Cost Accounting Records

Maintain cost accounting records for the project distinguishing between the following work cost categories:

1. Work performed based on bid item prices
2. Change order work other than extra work. Distinguish this work by:
 - 2.1. Bid item prices
 - 2.2. Force account
 - 2.3. Agreed price
3. Extra work. Distinguish extra work by:
 - 3.1. Bid item prices
 - 3.2. Force account
 - 3.3. Agreed price
 - 3.4. Specialist billing
4. Work performed under claim notifications
5. Overhead
6. Subcontractors, suppliers, owner-operators, and professional services

Cost accounting records must include:

1. Final cost code lists and definitions
2. Itemization of the materials used and corresponding vendor's invoice copies
3. Direct cost of labor
4. Equipment rental charges
5. Workers' certified payrolls
6. Equipment:
 - 6.1. Size
 - 6.2. Type
 - 6.3. Identification number

6.4. Hours operated

5-1.11E Change Order Work Bills

Maintain separate records for change order work costs.

Submit change order bills using the Department's Internet change order billing system.

The Contractor submitting and the Engineer approving a change order work bill using the Internet change order work billing system is the same as each party signing the report.

The Department provides billing system:

1. Training within 30 days of your request
2. Accounts and user identification to your assigned representatives after a representative has received training

Each representative must maintain a unique password.

5-1.12 QUALITY CONTROL

5-1.12A General

Provide QC.

5-1.12B Noncompliant and Unauthorized Work

Correct or remove and replace work that is noncompliant, unauthorized, or both. The Department does not pay for any of the following:

1. Corrective, removal, or replacement work
2. Unauthorized work
3. Remedial work

The Department may authorize a remedy, including a reduced payment for noncompliant work left in place.

If you fail to comply promptly with an order under section 5-1.12B<Noncompliant and Unauthorized Work>, the Department may correct, remove, or replace noncompliant or unauthorized work. The Department deducts the cost of this work.

5-1.13 JOB SITE APPEARANCE

Keep the job site neat. In areas visible to the public:

1. If practicable, dispose of debris removed during clearing and grubbing concurrently with its removal. If stockpiling is necessary, dispose of weekly.
2. Furnish trash bins for debris from construction. Place debris in trash bins daily.
3. Stack forms for falsework to be reused neatly and concurrently with their removal.

5-1.14 AREAS FOR USE

Occupy the highway only for purposes necessary to perform the work.

If no State-owned area is designated for the Contractor's use, you may arrange for temporary storage with the:

1. Engineer on State property within the Contract limits
2. Department on State property outside the Contract limits

Defend, indemnify, and hold the State harmless to the same extent as under section 7-1.05 <Indemnification>.

The Department does not allow temporary residences within the highway.

5-1.15 EQUIPMENT

Clearly stencil or stamp at a clearly visible location on each piece of equipment except hand tools an identifying number and:

1. On compacting equipment, its make, model number, and empty gross weight that is either the producer's rated weight or the scale weight
2. On meters and on the load-receiving element and indicators of each scale, the make, model, serial number, and fabricator's rated capacity

Submit a list:

1. Describing each piece of equipment
2. Showing its identifying number

Upon request, submit producer's information that designates portable vehicle scale capacities.

For proportioning materials, use measuring devices, material plant controllers, and undersupports complying with section 9-1.02B [<Weighing Equipment and Procedures>](#).

Measuring devices must be tested and approved under California Test 109 in the Department's presence by any of the following:

1. County Sealer of Weights and Measures
2. Scale Service Agency
3. Division of Measurement Standards Official

The indicator over-travel must be at least 1/3 of the loading travel. The indicators must be enclosed against moisture and dust.

Group measuring system dials so that the smallest increment for each indicator can be read from the location at which proportioning is controlled.

5-1.16–5-1.17 RESERVED

5-1.18 PROPERTY AND FACILITY PRESERVATION

5-1.18A General

Preserve property and facilities, including:

1. Adjacent property
2. Department's instrumentation
3. ESAs
4. Lands administered by other agencies
5. Railroads and railroad equipment
6. Roadside vegetation not to be removed
7. Utilities
8. Waterways

Immediately report damage to the Engineer.

If you cause damage, you are responsible.

Install sheet piling, cribbing, bulkheads, shores, or other supports necessary to support existing facilities or support material carrying the facilities.

Dispose of temporary facilities when they are no longer needed.

If you damage plants not to be removed:

1. Dispose of them unless the Engineer allows you to reduce them to chips and spread the chips within the highway at locations designated by the Engineer
2. Replace them

Replace plants with plants of the same species.

Replace trees with 24-inch-box trees.

Replace shrubs with No. 15-container shrubs.

Replace ground cover plants with plants from flats. Replace *Carpobrutus* ground cover plants with plants from cuttings. Plant ground cover plants 1 foot on center.

If a plant establishment period is specified, replace plants before the start of the plant establishment period; otherwise, replace plants at least 30 days before Contract acceptance.

Water each plant immediately after planting and saturate the backfill soil around and below the roots or ball of earth around the roots of each plant. Water as necessary to maintain plants in a healthy condition until Contract acceptance.

The Department may make a temporary repair to restore service to a damaged facility.

If working on or adjacent to railroad property, do not interfere with railroad operations.

For an excavation on or affecting railroad property, submit work plans showing the system to be used to protect railroad facilities. Instead of the 15 days specified in 5-1.09B <Action Submittals>, allow 65 days for the review of the plans.

5-1.18B Nonhighway Facilities (Including Utilities)

The Department may rearrange a nonhighway facility during the Contract. Rearrangement of a nonhighway facility includes installation, relocation, alteration, or removal of the facility.

The Department may authorize facility owners and their agents to enter the highway to perform rearrangement work for their facilities or to make connections or repairs to their property. Coordinate activities to avoid delays.

Notify the Engineer at least 3 business days before you contact the regional notification center under Govt Code § 4216 et seq. Failure to contact the notification center prohibits excavation.

Before starting work that could damage or interfere with underground infrastructure, locate the infrastructure described in the Contract, including laterals and other appurtenances, and determine the presence of other underground infrastructure inferred from visible facilities such as buildings, meters, or junction boxes.

Notify the Engineer if the infrastructure described in the Contract cannot be found. If after giving the notice, you find the infrastructure in a substantially different location than described, finding the infrastructure is change order work.

Underground infrastructure described in the Contract may be in different locations than described, and additional infrastructure may exist.

Upon discovering an underground main or trunk line not described in the Contract, immediately notify the Engineer and the infrastructure owner. The Engineer orders the locating and protecting of the infrastructure. The locating and protecting is change order work. If ordered, repair infrastructure damage. If the damage is not due to your negligence, the repair is change order work.

If necessary underground infrastructure rearrangement is not described in the Contract, the Engineer may order you to perform the work. The rearrangement is change order work.

If you want infrastructure rearrangement different from that described in the Contract:

1. Notify the Engineer
2. Make an arrangement with the infrastructure owner
3. Obtain authorization for the rearrangement
4. The Department does not adjust time or payment for rearrangement different from the Contract
5. Pay the infrastructure owner any additional cost

Immediately notify the Engineer of a delay due to:

1. The presence of main line underground infrastructure not described in the Contract or in a substantially different location
2. Rearrangement different from the Contract

5-1.19 MAINTENANCE AND PROTECTION

5-1.19A General

Maintain and protect work until the Department has granted relief from maintenance or accepted the Contract.

Maintain temporary facilities until they are no longer needed.

Prevent construction equipment that exceeds the maximum weight limits in Veh Code Div 15 from operating on completed or existing treated base, pavement, or structures.

5-1.19B Load Limits

5-1.19B(1) General

For areas within the project limits and subject to the Contractor providing protective measures and repairing related damage, construction equipment exceeding the size or weight limits in Veh Code Div 15 may move over:

1. Public roads within the highway
2. Treated base or pavement under construction or completed
3. Culverts and pipes
4. Structures not open to traffic that are designed for AASHTO HS20-44 live loading, except culverts and pipes. Before crossing one of these structures, submit the dimensions and maximum axle loadings of the equipment; and unless a material hauling equipment lane on a bridge is shown on the drawings, comply with the following specifications:
 - 4.1. The maximum loading on a bridge due to pneumatic-tired truck and trailer combinations must not exceed:
 - 4.1.1. 28,000 lb for single axles
 - 4.1.2. 48,000 lb for tandem axles
 - 4.1.3. 60,000 lb total gross load for single vehicles
 - 4.1.4. 110,000 lb total gross load for truck and trailer or semi-trailer combinations
 - 4.2. The loading on a bridge due to 2- and 3-axle pneumatic tired earthmovers must not exceed that shown in the following table:

Allowable Construction Loading on Bridges for 2- and 3-Axle Earthmovers

Bridge girder center-to-center spacing (feet)	Maximum axle loading (pounds)
4	28,000
5	29,000
6	30,000
7	32,000
8	34,000
9	37,000
10 and over	40,000

NOTE: Minimum axle spacing:

For 2-axle earthmovers:
Axles 1 to 2 = 20 feet

For 3-axle earthmovers:
Axles 1 to 2 = 8 feet
Axles 2 to 3 = 20 feet

5. Completed or existing base, pavement, and structures under the Department's Transportation Permits Manual, whether open to the public or not

Loads imposed on existing, new, or partially completed structures must not exceed the load carrying capacity of the structure or any portion of the structure as determined by AASHTO LRFD with interims and California Amendments, Design Strength Limit State II. The f_c to be used in computing the load carrying capacity must be the smaller of the following:

1. Actual compressive strength at the time of loading
2. Value of f'_c shown on the plans for that portion of the structure or 2.5 times the value of f'_c shown on the plans for portions of the structure where no f'_c is shown

5-1.19B(2) Increased Load Carrying Capacity

You may submit a request to the Department to redesign a structure to increase its load carrying capacity.

The Department does not authorize a redesign for any of the following:

1. Load increase more than 130,000 lb per single axle or pair of axles less than 8 feet apart
2. Total gross vehicle weight more than 330,000 lb

Your request to the Department must include:

1. Description of the structure or structures
2. Detailed overload description
3. Date the revised plans are required
4. Signed statement agreeing to pay the costs, including the engineering costs
5. Signed statement agreeing to waive a time extension request for any delay

If the Department authorizes a redesign to strengthen the structure, the Engineer will inform you of the change's estimated cost and availability date of the revised plans. If the cost and date are satisfactory to you, the Engineer prepares a *Change Order* for the changes.

5-1.19B(3) Material Hauling Equipment Lane on Bridges

Section 5-1.19B(3) applies to a bridge constructed with a material equipment hauling lane.

You may cross the bridge with pneumatic-tired material hauling equipment that exceeds the size and weight limits specified but that does not exceed the load limits shown on the material hauling equipment loading diagram on the plans.

For each bridge with a material equipment hauling lane:

1. Construct a minimum 150-foot approach at each end bridge end to a grade that provides a smooth transition to the bridge roadway grade. Maintain these approaches in a smooth and uniform condition during the operation of the equipment.
2. Operate equipment in a way that prevents jolting and bouncing of the equipment while crossing the bridge.
3. Confine equipment to the material hauling lane using temporary barriers unless the plans show that the entire bridge may be used for hauling equipment and the permanent barriers are completed.
4. At most 1 piece of equipment may be on the bridge at one time.

If requested, verify the weight of loaded material hauling equipment by weighing. The Department furnishes individual wheel or axle type scales. The Department weighs the equipment within the project limits and within the highway at a location accessible to the equipment. You determine the exact weighing location. Install and maintain the scales. Installing and maintaining scales is change order work.

5-1.20 MAINTENANCE AND PROTECTION RELIEF

You may request relief from maintenance and protection responsibilities on a completed work portion. The work portion must have been completed under the Contract and to the Engineer's satisfaction. Work parts eligible for relief include:

1. Completed 0.3 mi of roadway or 0.3 mi of one roadway of a divided highway or frontage road including:
 - 1.1. Planned roadway protection work
 - 1.2. Lighting
 - 1.3. Required traffic control
 - 1.4. Access facilities
2. Important bridge or other structure
3. Complete unit of a traffic control signal system or a highway lighting system

4. Nonhighway facility constructed for another agency

If relieved by the Department, you are not required to perform further work on that portion of work. On a relieved portion of work, you are not responsible for damage, including damage caused by traffic or the elements, except for that caused by your own activities or negligence

5-1.21 DAMAGE RESTORATION

5-1.21A General

Before Contract acceptance, restore damaged work to the same state of completion as before the damage. Restoration of damaged work includes restoration of erected falsework and formwork.

The Department does not adjust payment for restoration that the Engineer determines was caused by your failure to do either of the following:

1. Construct the work under the Contract
2. Protect the work

5-1.21B Damage Caused by Acts of God

Under Pub Cont Code § 7105, the Department pays for restoration to damaged work in excess of 5 percent of the total bid if the damage was caused by an act of God.

Submit a request for restoration work payment before performing work other than emergency work.

The Department determines the restoration work cost under section 9-1.04 **<Force Account>** except markups are not allowed.

The Department may change the Contract for the areas requiring restoration. If the cost for the changes exceeds the restoration cost based on the verified Bid Item List, the Engineer determines the payment adjustment under section 9-1.04 **<Force Account>**.

5-1.21C Plant Damage

Section 5-1.12C applies if ordered and damage was not caused by an act of God.

Replace plants damaged from either of the following conditions:

1. Ambient temperature falls below 32 degrees F
2. Department or its supplier restricts or stops water delivery

This plant replacement work is change order work.

Repair slopes or other existing facilities that were damaged before starting job site activities. This work is change order work.

Repair slopes or other existing facilities that were damaged by a change in the runoff pattern from that which existed on the date of the *Notice to Bidders* and was the result of work by others within the right-of-way. This work is change order work.

Repair slopes, plants, irrigation systems, and other highway facilities damaged as a result of rain during the plant establishment period. The Department pays 1/2 the accumulated costs in excess of the greater of 5 percent of the plant establishment work or \$2,000; the Contractor pays the other 1/2. The Department determines the repair cost under section 9-1.04 **<Force Account>**.

5-1.22–5-1.23 RESERVED

5-1.24 CLAIMS

Reserved

5-1.25–5-1.29 RESERVED

5-1.30 FINAL COMPLETION

When you complete the work, request the Engineer's final inspection.

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If the Engineer determines that the work is complete, the Engineer recommends Contract acceptance. Immediately after Contract acceptance, you are relieved from:

1. Maintenance and protection duties
2. Responsibility for injury to persons or property or damage to the work occurring after Contract acceptance except as specified in section 6-3.05 <Guarantee>

6 QUALITY CONTROL AND ASSURANCE

6-1 GENERAL

6-1.01 GENERAL

Section 6 includes specifications related to quality control and assurance.

6-2 MATERIAL SOURCE

6-2.01 GENERAL

Material incorporated into the work must be new.

6-2.02 MATERIAL SOURCE

Before the preconstruction conference, submit material source information on a *Notice of Materials to Be Used* form.

6-2.03 DEPARTMENT-FURNISHED MATERIALS

Request Department-furnished material except sign panels at least 15 days before their scheduled installation. Request sign panels at least 30 days before their scheduled installation.

If the Department furnishes the material:

1. At the job site, unload and store
2. At a location other than the job site, bring material to the job site and store

The Engineer orders the return and disposal of surplus Department-furnished material. This returning and disposing of material is change order work.

You are responsible for the cost of replacing Department-furnished material. The Department deducts replacement costs. Department-furnished material not used in the work remains the property of the Department.

6-2.04 LOCAL MATERIALS

Local material must be:

1. Mineral material, including rock, sand, or gravel, or earth
2. Selected material or material procured from an established commercial source and not local borrow
3. Procured or produced from a source in the work vicinity specifically for project use

Upon your request, the Department tests material from an untested local source. If satisfactory material from that source is used in the work, the Department does not charge you for the tests; otherwise, the Department deducts test costs.

6-2.05 BUY AMERICA

6-2.05A Crumb Rubber (Pub Res Code § 42703(D))

Furnish crumb rubber with a certificate of compliance. Crumb rubber must be:

1. Produced in the U.S.
2. Derived from waste tires taken from vehicles owned and operated in the U.S.

6-2.05B Steel and Iron Materials (23 CFR 635.410)

Section 6-2.05B applies to a federal-aid contract.

Furnish steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)]
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or \$2,500, materials produced outside the U.S. may be used

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials

6-3 WORK QUALITY

6-3.01 GENERAL

Store materials and samples in a way that preserves the quality and facilitates prompt inspection.

Welding must comply with section 47-3.xx <Welding, General>.

6-3.02 SPECIFIC BRAND OR TRADE NAME AND SUBSTITUTION

A reference to a specific brand or trade name establishes a quality standard and is not intended to limit competition. You may use a product that is equal to or better than the specified brand or trade name if authorized.

Submit a substitution request with a time period that:

1. Follows Contract award
2. Allows 30 days for review
3. Causes no delay

Include substantiating data with the substitution request that proves that substitution:

1. Causes no delay
2. Is of equal or better quality and suitability

6-3.03 QUALITY CONTROL

Material production and testing equipment must measure accurately and precisely.

Prepare and maintain QC records including:

1. Inspection types, results, and dates
2. Testing types, results, and dates
3. Inspector names and certificates
4. Acceptance criteria
5. Corrective actions

6-3.04 QUALITY ASSURANCE PROGRAM

6-3.04A General

Work is subject to the Department's QA program. The Department's QA does not relieve you of your responsibility to provide QC.

The Department may use multiple QA methods for a material.

You may examine the records and reports of tests the Department performs if they are available at the job site.

Schedule work to allow time for QA.

The Department deducts testing costs of noncompliant work.

The Department may retest material previously tested and authorized for use. If the Department notifies you of a retest, furnish resources for retesting.

Ensure the Department's safe and unrestricted access to the work and furnish facilities necessary to determine that the work complies with the Contract. Allow the Department to record, including photograph and video record, to ensure a material is produced to comply with the Contract.

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For a material specified to comply with a State Specification number, the material may comply with a later version of the specification.

6-3.04B Source Inspection Expense Deductions

For each item shown in the following table, the Department deducts the amount shown.

Source Inspection Expense Deductions		
Item	Distance ^a	Deduction
Steel pipe piling	> 300	\$5,000
Prestressing system	> 3,000	\$8,000
Precast concrete members specified section 47-x <Quality Control and Assurance for Structures—Precast Concrete Members>		
Epoxy-coated reinforcement		
Structural steel for sign structures		
Miscellaneous metal		
Extinguishable message signs	> 300	\$1,500
Variable message signs		
Service equipment enclosures		
Telephone demarcation cabinets		
Closed circuit television cabinets		
Weigh-in-motion cabinets		
Highway advisory radio cabinets		
Poles for signal, lighting, and electrical systems	> 300	\$1,000 for ≤10 poles and \$1,000 for every multiple of 10 poles thereafter
Structural steel	> 300	The greater of: 1. \$5,000 2. \$0.02/lb
	> 3,000	The greater of: 1. \$8,000 2. \$0.036/lb
Structural steel paint	> 300	The greater of: 1. \$2,000 2. \$0.01/sq ft
	> 3,000	The greater of: 1. \$5,000 2. \$0.015/sq ft
Check samples	> 300	\$2,000
High mast poles	> 300	\$2,500
	> 3,000	\$5,000
PTFE bearings, ≤ 2 lots	> 300	\$5,000
	> 3,000	\$15,000
PTFE bearings, > 2 lots	> 300	\$10,000
	> 3,000	\$20,000

^aDistance is air-line miles from both Sacramento and Los Angeles to the inspection source.

6-3.04C Material Source Inspection and Testing

Section 6-3.04C applies to a material to be inspected or tested at the source.

Request inspection:

1. At least 3 business days before the planned inspection date for a material source within California
2. At least 5 business days before the planned inspection date for a material source outside California but within the U.S.
3. 50 days before the planned production start for a material source outside the U.S. Notify the Engineer at least 20 days before the actual start.

6-3.04D Job Site Inspection and Testing

Section 6-3.04D applies to a material to be inspected or tested at the job site.

Furnish material to the job site 15 days before its incorporation into the work.

6-3.04E Certificates of Compliance

Section 6-3.04E applies to a material specified to be furnished with a certificate of compliance.

Submit the certificate before its incorporation into the work.

The certificate must be signed by the producer of the material and must state that the material complies with the Contract.

Submit a certificate for each lot of the material. Identify the lot on the certificate.

Submit a certificate for any material produced outside the U.S.

6-3.04F Reserved

6-3.04G Test Samples

Section 6-3.04G applies to a material for which test samples are specified or requested.

Notify the Engineer 10 days before taking a sample. Submit material to be tested with a sample submittal form. For the form, go to the METS Web site.

Restore work immediately after sampling.

6-3.04H Reserved

6-3.04I Material Source Plant Audits

Section 6-3.04I applies to a material for which a material source plant audit is specified.

The Department maintains a list of plants with authorized audits on the METS Web site. The list shows the expiration date of each authorized audit.

Submit the self-audit form available at the METS Web site. The Department either accepts or rejects the self-audit within 15 days.

If the self-audit is accepted, the Department completes a plant audit within 70 days.

If the self-audit is rejected, you may resubmit. Record how each deficiency has been corrected with the resubmittal. The Department's resubmittal procedures are the same as those for an original submittal.

If a plant fails a Department audit, you may request and must allow 40 days for a subsequent audit. Record how each deficiency has been corrected and include it with the request for a subsequent audit.

6-3.04J Quality Control Plans

Section 6-3.04J applies to a material for which a quality control plan is specified.

Submit 7 copies of the certified plan and make available 1 copy at each location where work is performed.

6-3.04K Authorized Material Lists

Section 6-3.04K applies to a material specified to be on one of the Authorized Material Lists.

The material must be on one of the Authorized Material Lists at the METS Web site before it is incorporated into the work.

6-3.04L Authorized Material Source List

Section 6-3.04L applies to a material specified to be on the Authorized Material Source List.

The material source must be on the Authorized Material Source List before the item from the source is incorporated into the work.

6-3.05 GUARANTEE

Guarantee that work remains free from substantial defects for 1 year after Contract acceptance except for work portions for which you were relieved of maintenance and protection. Guarantee each of these relieved work portions for 1 year after the relief date.

The guarantee excludes damage or displacement caused by an event outside your control, including:

1. Normal wear and tear
2. Improper operation
3. Insufficient maintenance
4. Abuse
5. Unauthorized change
6. Act of God

During the guarantee period, repair or replace each work portion having a substantial defect.

The Department does not pay for corrective work.

During corrective work activities, provide the same insurance specified before Contract acceptance.

The Contract bonds must be in force until the later of:

1. Expiration of guarantee period
2. Completion of corrective work

If a warranty specification conflicts with section 6-3.05 <Guarantee>, comply with the warranty specification.

During the guarantee period, the Engineer monitors the completed work. If the Engineer finds work having a substantial defect, the Engineer lists work parts and furnishes you the list.

Within 10 days of receipt of the list, submit for authorization a detailed plan for correcting the work. Include a schedule that includes:

1. Start and completion dates
2. List of labor, equipment, materials, and any special services you plan to use
3. Work related to the corrective work, including traffic control and temporary and permanent pavement markings

The Engineer notifies you when the plan is authorized. Start corrective work and related work within 15 days of notice.

If the Engineer determines corrective work is urgently required to prevent injury or property damage:

1. The Engineer furnishes you a request to start emergency repair work and a list of parts requiring corrective work
2. Mobilize within 24 hours and start work
3. Submit a corrective work plan within 5 business days of starting emergency repair work

If you fail to perform work as specified, the Department may perform the work and bill you.

6-3.06 INDEPENDENT ASSURANCE PROGRAM

The independent assurance program authorizes laboratories, including personnel, for testing materials on a Department contract.

Use a laboratory:

1. Authorized by the Department
2. Not employed or compensated by any subcontractor or subcontractor's affiliate providing other services or materials for the project

7 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

7-1.01 GENERAL

Section 7 includes specifications regarding your:

1. Compliance with laws
2. Responsibilities for public safety and convenience
3. Responsibilities for indemnification, insurance, and liability

7-1.02 LAWS

7-1.02A General

Comply with laws, regulations, orders, and decrees applicable to the project. Indemnify and defend the State against any claim or liability arising from the violation of a law, regulation, order, or decree by you or your employees. Immediately report to the Engineer a discrepancy or inconsistency between the Contract and a law, regulation, order, or decree.

If the Department incurs any fines or penalties because of your failure to comply with a law, regulation, order, or decree, the Department deducts the amount of the fine or penalty.

Immediately notify the Engineer if a regulatory agency requests job site or records access. Submit a list of documents provided to the agency and issued enforcement actions.

7-1.02B U.S. Fair Labor Standards Act

Comply with 29 USC § 201 et seq.

7-1.02C National Pollutant Discharge Elimination System

Comply with permits from State and Regional Water Quality Control Board, United States Army Corps of Engineers, and Department of Fish and Game. Maintain permit copies at the job site. Make the permits available during the work.

7-1.02D–7-1.02H Reserved

7-1.02I Government Code

7-1.02I(1) General

Reserved

7-1.02I(2) Nondiscrimination

Under 2 CA Code Regs §§ 8107 and 8203:

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

STANDARD CALIFORNIA NONDISCRIMINATION CONSTRUCTION CONTRACT SPECIFICATIONS (GOV. CODE, SECTION 12990)

These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000, or more.

1. As used in the specifications:
 - a. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing, or any person to whom the Administrator delegates authority;
 - b. "Minority" includes:
 - (i) Black (all persons having primary origins in any of the black racial groups of Africa, but not of Hispanic origin);
 - (ii) Hispanic (all persons of primary culture or origin in Mexico, Puerto Rico, Cuba, Central or South America or other Spanish derived culture or origin regardless of race);
 - (iii) Asian / Pacific Islander (all persons having primary origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and
 - (iv) American Indian / Alaskan Native (all persons having primary origins in any of the original peoples of North America and who maintain culture identification through tribal affiliation or community recognition).
2. Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall physically include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.
3. The contractor shall implement the specific nondiscrimination standards provided in paragraph 6(a) through (e) of these specifications.
4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Government Code, Section 12990, or the regulations promulgated pursuant thereto.
5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.
6. The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under Steps a. through e. below:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Provide written notification within seven days to the director of DFEH when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - c. Disseminate the Contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the Contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of the Contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.
 - e. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and

employment related activities to ensure that the equal employment opportunity policy and the Contractor's obligations under these specifications are being carried out.

7. Contractors are encouraged to participate in voluntary associations which assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's.
8. The Contractor is required to provide equal employment opportunity for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) if a particular group is employed in a substantially disparate manner.
9. Establishment and implementation of a bona fide affirmative action plan pursuant to Section 8104 (b) of this Chapter shall create a rebuttal presumption that a contractor is in compliance with the requirements of Section 12990 of the Government Code and its implementing regulations.
10. The Contractor shall not use the nondiscrimination standards to discriminate against any person because of race, color, religion, sex, national origin, ancestry, physical handicap, medical condition, marital status or age over 40.
11. The Contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code Section 12990.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code Section 12990 and its implementing regulations by the awarding agency. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code Section 12990.
13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

7-1.02J Reserved

7-1.02K Labor Code

7-1.02K(1) General

Work on the job site must comply with Labor Code §§ 1727 and 1770–1815 and 8 CA Code of Regs § 16000 et seq. Work includes roadside production and processing of materials.

7-1.02K(2) Wages

The Department obtains the general prevailing rate of wages applicable to the work to be done. The rate includes:

1. Employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.9
2. Apprenticeship or other training programs authorized by Labor Code § 3093
3. Similar purposes

The general prevailing wage rates and any applicable changes to these wage rates are available:

1. At the Department's Labor Compliance Office of the district in which the work is located
2. From the Department of Industrial Relations' Web site

Post the general prevailing wage rates at a prominent place at the job site (Labor Code § 1773.2).

The wage determinations refer to expiration dates. The determinations with a single asterisk after the expiration date, and in effect on the date of advertisement for bids, are good for the life of the Contract. The determinations with double asterisks after the expiration date indicate the wage rate to be paid for work performed after this date has been determined. If work is to extend past this date, pay the new rate and incorporate it into the Contract. Changes in general prevailing wage determinations apply to the Contract when the Director of Industrial Relations has issued them at least 10 days before advertisement. (Labor Code § 1773.6 and 8 CA Code of Regs 16204)

The Department does not recognize any claim for additional payment because of a payment by the Contractor of any wage rate in excess of the prevailing wage rate specified in the Contract.

The Contractor and any subcontractor must forfeit to the Department not more than \$50 per day or part of a day for each worker paid less than the prevailing wage rate and pay the worker the difference between the prevailing wage rate and the rate paid (Labor Code § 1775). The Labor Commissioner determines the amount of this penalty and bases the amount on:

1. Whether the failure to pay the correct prevailing wage rate was a good-faith mistake that the Contractor or subcontractor promptly and voluntarily corrected upon notice
2. The prior record of the Contractor or subcontractor in meeting its prevailing wage obligations
3. The Contractor or subcontractor's willful failure to pay the correct rate of prevailing wages

If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for the penalties described in section 7-1.02K(2) <Wages> unless the Contractor had knowledge of the failure to pay the correct general prevailing per diem wages or unless the Contractor fails to comply with the following requirements (Labor Code § 1775):

1. The contract executed between the Contractor and the subcontractor for the performance of work on the public works project must include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813 and 1815.
2. The Contractor must monitor the payment of the specified general prevailing rate of per diem wages by periodic review of the certified payroll records of the subcontractor.
3. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, the Contractor must diligently take corrective action to stop or rectify the failure, including withholding sufficient funds due the subcontractor for work performed on the public works project.
4. Before making final payment to the subcontractor for work performed on the public works project, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to its employees on the public works project and any amounts due under Labor Code § 1813.

Under Labor Code § 1775, the Department must notify the contractor on a public works project within 15 days of receipt by the Department of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

7-1.02K(3) Payroll Records (Labor Code § 1776)

Keep accurate payroll records.

Submit a copy of payrolls, weekly, including those of subcontractors. Include:

1. Each employee's:
 - 1.1. Full name
 - 1.2. Address
 - 1.3. Social security number
 - 1.4. Work classification
 - 1.5. Straight time and overtime hours worked each day and week
 - 1.6. Actual wages paid for each day to each:
 - 1.6.1. Journeyman

- 1.6.2. Apprentice
- 1.6.3. Worker
- 1.6.4. Other employee you employ for the work
- 1.7. Pay rate
- 1.8. Itemized deductions made
- 2. Apprentices and the apprentice-to-journeyman ratio

The employee's address and social security number are only required on the 1st record on which that name appears.

Each payroll record must include a *Statement of Compliance* signed under penalty of perjury that declares:

- 1. The information contained in the payroll record is true, correct, and complete
- 2. The employer has complied with the requirements of sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project
- 3. The wage rates paid are at least those required by the Contract

The Department allows the use of a form with identical wording as the *Statement of Compliance* form provided by the Department.

Make the certified payroll records available for inspection at all reasonable hours at your main office on the following basis:

- 1. Upon the employee's request or upon request of the employee's authorized representative, make available for inspection a certified copy of the employee's payroll record.
- 2. Make available for inspection or furnish a certified copy of all payroll records upon request of a representative of the:
 - 2.1. Department
 - 2.2. Division of Labor Standards Enforcement
 - 2.3. Division of Apprenticeship Standards of the Department of Industrial Relations
- 3. Refer the public's requests for certified payroll records to the Department. Upon the public's request, the Department makes available for inspection or furnishes copies of your certified payroll records. Do not give the public access to the records at your main office.

Furnish the Department the location of the records. Include the street address, city, and county. Furnish the Department a notification of a location and address change within 5 business days of the change.

Comply with a request for the records within 10 days after you receive a written request. If you do not comply within this period, the Department withholds from progress payments a \$25 penalty for each day or part of a day for each worker until you comply. You are not assessed this penalty for a subcontractor's failure to comply with Labor Code § 1776.

The Department withholds from progress payments for delinquent or inadequate payroll records (Labor Code § 1771.5). If you have not submitted an adequate payroll record by the month's 15th day for the period ending on or before the 1st of that month, the Department withholds 10 percent of the monthly progress estimate, exclusive of mobilization. The Department does not withhold more than \$10,000 or less than \$1,000.

7-1.02K(4) Apprentices

For answers to questions, contact the Division of Apprenticeship Standards before starting Contract work.

The Department deducts from progress payments civil penalties assessed by the Chief of the Division of Apprenticeship Standards for violating Labor Code § 1777.5 (Labor Code § 1777.7).

7-1.02K(5) Working Hours

Eight hours is a legal day's work (Labor Code § 1810).

The time of service of any worker employed on public work is limited and restricted to 8 hours in 1 day and 40 hours in 1 calendar week, except as provided by Labor Code § 1815 (Labor Code § 1811).

For each worker employed in the work for each day the worker works more than 8 hours in 1 day and 40 hours in 1 calendar week, the Department deducts \$25 as a penalty for violating Labor Code §§ 1810–1815 (Labor Code § 1813).

A Contractor's employee may work more than 8 hours per day and 40 hours per week if the Contractor pays the employee 1-1/2 times the basic pay rate for the hours worked in excess of 8 hours per day (Labor Code § 1814).

7-1.02K(6) Occupational Safety and Health Standards

7-1.02K(6)(a) General

Comply with applicable occupational safety and health standards, rules, regulations, and orders. The Occupational Safety and Health Standards Board is the only agency authorized in the State to adopt and enforce occupational safety and health standards (Labor Code § 142 et seq.).

You are the controlling employer and must ensure hazardous conditions are corrected (Labor Code § 6400).

The Engineer may notify Cal/OSHA if you fail to establish or maintain a safe and healthful workplace.

Submit copies of your Injury and Illness Prevention Program and permits required by Cal/OSHA. The program must address the use of personal and company-issued electronic devices during work. Do not allow the use of entertainment and personal communication devices in the work zone. Workers may use a communication device for business purposes in the work area, at a location where their safety and the safety of other workers and the traveling public is not compromised.

7-1.02K(6)(b) Excavation Safety

Comply with Labor Code § 6705 while excavating. For an excavation 5 feet or more in depth, submit shop drawings for a protective system.

The drawings must show the design and details for providing worker protection from caving ground during excavation. Submittal must allow review time and include the contents shown in the following table except the review time is 65 days for an excavation on or affecting railroad property:

Drawing Review Time and Contents		
	Plan not requiring a signature	Plan requiring a signature
Review time	5 business days before excavating	20 days before excavating
Contents	Drawings Calculations Material information Proprietary system information	Drawings Calculations Material information Proprietary system information Soil classification Soil properties Soil design calculations

7-1.02K(6)(c) Tunnel Safety

Cal/OSHA classifies tunnels into one of the following classifications:

1. Nongassy
2. Potentially gassy
3. Gassy
4. Extrahazardous

If a tunnel location is described in the Contract, the classification is included in the Information Handout and you must:

1. Designate an on-site Safety Representative under 8 CA Code of Regs § 8406
2. Submit the name of your on-site Safety Representative at least 7 days before starting work at each tunnel
3. Prominently post a notice at the job site of:
 - 3.1. Tunnel classifications

- 3.2. Any special orders, rules, special conditions, or regulations related to tunnel work
4. Ensure your workers are informed of these classifications

Notify the Engineer at least 20 days before a worker enters a tunnel not described in the Contract. The Department obtains the classification of the tunnel. The Engineer may suspend the work because of a change directly resulting from the Contractor's planned activities that causes activities to fall under the Tunnel Safety Orders of 8 CA Code of Regs § 8422.

7-1.02K(6)(d)–7-1.02K(6)(i) Reserved

7-1.02K(6)(j) Lead Compliance Plan

Section 7-1.02K(6)(j) applies if a bid item for a lead compliance plan is included in the Contract.

Prepare a work plan to prevent or minimize worker exposure to lead while managing and handling earth materials, paint system debris, traffic stripe residue, and pavement marking residue containing lead. Regulations containing specific Cal/OSHA requirements when working with lead include 8 CA Code of Regs § 1532.1.

The plan must contain the items listed in 8 CA Code of Regs § 1532.1(e)(2)(B). Before submittal, a CIH must sign and seal the plan. Submit the plan at least 7 days before starting any activity that presents the potential for lead exposure. The Engineer notifies you of the acceptability of the plan within 4 business days of receipt.

Before starting any activity that presents the potential for lead exposure to employees who have no prior training, including State employees, provide a safety training program to these employees that complies with 8 CA Code of Regs § 1532.1 and your lead compliance program.

Submit copies of air monitoring or job site inspection reports made by or under the direction of the CIH under 8 CA Code of Regs § 1532.1 within 10 days after the date of monitoring or inspection.

Supply personal protective equipment, training, and washing facilities required by your lead compliance plan for 5 State employees.

7-1.02K(6)(k)–7-1.02K(6)(t) Reserved

7-1.02L Public Contract Code

7-1.02L(1) General

Reserved

7-1.02L(2) Antitrust Claims

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties. [Pub Cont Code § 7103.5 (b)]

7-1.02M Public Resources Code

7-1.02M(1) General

Reserved

7-1.02M(2)–7-1.02M(7) Reserved

7-1.02N Reserved

7-1.02O Vehicle Code

Under Veh Code § 591, the Department has determined that within those areas that are within the project limits and are open to public traffic, comply with the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Veh Code.

Veh Code § 591 does not relieve you or any other person from the duty of exercising due care.

7-1.02P–7-1.02Q Reserved

7-1.02R Environmental Stewardship

Comply with section 14.

7-1.02S–7-1.02Z Reserved

7-1.03 PUBLIC CONVENIENCE

Compliance with this section does not relieve you of your responsibility for public safety.

Construction activities must not inconvenience the public or abutting property owners. Schedule and conduct work to avoid unnecessary inconvenience to the public and abutting property owners. Avoid undue delay in construction activities to reduce the public's exposure to construction.

Where possible, route traffic on new or existing paved surfaces.

Immediately remove hauling spillage from roadway lanes or shoulders open to traffic. When hauling on roadways, trim loads and remove material from shelf areas to minimize spillage.

Keep existing traffic signals and highway lighting in operation for the benefit of the public. Other forces will continue routine maintenance of existing systems.

Maintain convenient access to driveways, houses, and buildings. When the abutting property owner's access across the right of way line is to be eliminated or replaced under the Contract, the existing access must not be closed until the replacement access facilities are usable. Construct temporary approaches to crossings and intersecting highways.

Cover signs that regulate or direct traffic to areas not open to the public. Providing, maintaining, and removing the covers on construction area signs is paid as extra work under section 4-1.03. <Extra Work>

Provide a reasonably smooth and even surface for use by traffic at all time during excavation of roadways and construction of embankments. Before other grading activities, place fill at culverts and bridges to allow traffic to cross. If ordered, excavate roadway cuts in layers and construct embankments in partial widths at a time alternating construction from one side to the other and routing traffic over the side opposite the one under construction. Install or construct culverts on only 1/2 the width of the traveled way at a time; keep the traveled way portion being used by traffic open and unobstructed until the opposite side of the traveled way is ready for use by traffic.

Upon completion of rough grading or placing any subsequent layer, bring the surface of the roadbed to a smooth, even condition free of humps and depressions, satisfactory for the use of the public.

After subgrade preparation for a specified layer of material has been completed, repair any damage to the roadbed or completed subgrade, including damage due to use by the public.

While subgrade and paving activities are underway, allow the public to use the shoulders. If half-width paving methods are used, allow the public to use the side of the roadbed opposite the one under construction. If enough width is available, keep open a passageway wide enough to accommodate at least 2 lanes of traffic at locations where subgrade and paving activities are underway. Shape shoulders or reshape subgrade as necessary to accommodate traffic during subgrade preparation and paving activities.

Provide pilot car and driver or flaggers whenever necessary to ensure that the public is given safe guidance through the work zone. Except as ordered, at locations where traffic is being routed through construction under one-way controls, move your equipment in compliance with the one-way controls.

Apply water or dust palliative for the alleviation or prevention of dust nuisance.

Install signs, lights, flares, temporary railing (Type K), barricades and other facilities to direct traffic. Furnish flaggers to direct the movement of the public through or around the work.

You will be required to pay the cost of replacing or repairing all facilities installed under extra work for the convenience or direction or warning of the public which are lost while in your custody, or are damaged by your operations to such an extent as to require replacement or repair.

The Engineer may order or consent to your request to open a completed section of surfacing, pavement, or structure roadway surface for public use. You will not be compensated for any delay to your construction activities caused by the public. This does not relieve you from any other contractual responsibility.

7-1.04 PUBLIC SAFETY

You are responsible to provide for public safety.

Do not construct a temporary facility that interferes with the safe passage of traffic.

Control dust resulting from the work, inside and outside the right-of-way.

Move workers, equipment, and materials without endangering traffic.

Whenever your operations create a condition hazardous to the public, furnish, erect and maintain those fences, temporary railing, barricades, lights, signs, and other devices and take any other necessary protective measures to prevent damage or injury to the public.

Any fences, temporary railing, barricades, lights, signs, or other devices furnished, erected and maintained by you are in addition to those for which payment is provided elsewhere in the specifications.

Furnish flaggers, as necessary, to warn the public of any dangerous conditions to be encountered.

Use of signs, lights, flags, or other protective devices must conform with the California MUTCD and any directions of the Engineer. Signs, lights, flags or other protective devices must not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs or traffic control devices.

Install temporary illumination in a manner which the illumination and the illumination equipment does not interfere with public safety. The installation of general roadway illumination does not relieve you from furnishing and maintaining any protective devices.

Equipment must enter and leave the highway via existing ramps and crossovers and must move in the direction of public traffic. All movements of workmen and construction equipment on or across lanes open to public traffic must be performed in a manner that will not endanger the public. Your vehicles or other mobile equipment which leave a lane open to public traffic to enter the construction area, must slow down gradually in advance of the location of the turnoff to give traffic following an opportunity to slow down. When leaving a work area and entering a roadway carrying public traffic, your vehicles and equipment must yield to public traffic.

Notify the Engineer not less than 20 days and not more than 90 days before the anticipated start of an activity that will change the vertical or horizontal clearance available to public traffic, including shoulders.

If vertical clearance is temporarily reduced to 15.5 feet or less, place low clearance warning signs in accordance with the California MUTCD and as directed by the Engineer. Signs must comply with the dimensions, color, and legend requirements of the California MUTCD and these specifications except that the signs must have black letters and numbers on an orange retroreflective background. W12-2P signs must be illuminated so that the signs are clearly visible.

Pave or provide full width continuous and cleared wood walks for pedestrian openings through falsework. Protect pedestrians from falling objects and curing water for concrete. Extend overhead protection for pedestrians not less than 4 feet beyond the edge of the bridge deck. Illuminate all pedestrian openings through falsework.

Do not store vehicles, material, or equipment in a way that:

1. Creates a hazard to the public
2. Obstructs traffic control devices

Do not install or place temporary facilities used to perform the work which interfere with the free and safe passage of public traffic.

If you appear to be neglectful or negligent in furnishing warning devices and taking protective measures, the Engineer may direct attention to the existence of a hazard and the necessary warning devices must

be furnished and installed and protective measures taken by you. If the Engineer points out the inadequacy of warning devices and protective measures, that action on the part of the Engineer does not relieve you from your responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.

Install temporary railing (Type K) under the following conditions:

1. Excavations - Where the near edge of the excavation within 15 feet from the edge of the traffic lane
2. Temporarily unprotected permanent obstacles - When the work includes the installation of a fixed obstacle together with a protective system, such as a sign structure together with protective railing, and you elect to install the obstacle prior to installing the protective system; or you, for your convenience and with permission of the Engineer, remove a portion of an existing protective railing at an obstacle and do not replace such railing completely the same day
3. Storage areas - When material or equipment is stored within 15 feet of the edge of the traveled way and the storage is not otherwise prohibited by the provisions of these Standard Specifications and the special provisions
4. Height differentials - When construction operations create a height differential greater than 0.15 feet within 15 feet of the edge of traffic lane

Temporary railing (Type K) does not need to be installed where excavations within 15 feet from edge of the traffic lane are:

1. Covered with steel plates or concrete covers of adequate thickness to prevent accidental entry by traffic or the public
2. In side slopes, where the downhill slope is 4:1 (horizontal:vertical) or less unless a naturally occurring condition
3. Protected by existing barrier or railing

Offset the approach end of temporary railing (Type K) a minimum of 15 feet from the edge of the traffic lane open to public traffic. Install the temporary railing on a skew toward the edge of the traffic lane of not more than one foot transversely to 10 feet longitudinally with respect to the edge of the traffic lane. If the 15-foot minimum offset cannot be achieved, the temporary railing must be installed on the 10 to 1 skew to obtain the maximum available offset between the approach end of the railing and the edge of the traffic lane, and an array of temporary crash cushion modules must be installed at the approach end of the temporary railing.

Secure in place temporary railing (Type K) before starting work for which the temporary railing is required.

Except for installing, maintaining, and removing traffic control devices, unless a traffic barrier is present, close the lane adjacent to a work zone under the following conditions:

Lane Closure Conditions

Approach Speed of Public Traffic (Posted Limit) (Miles Per Hour)	Work Areas
Over 45	Within 6 feet of a traffic lane but not on a traffic lane
35 to 45	Within 3 feet of a traffic lane but not on a traffic lane

Shoulder Closure Conditions

Approach Speed of Public Traffic (Posted Limit) (Miles Per Hour)	Work Areas
Over 45	Greater than 6 feet but less than 15 feet from a lane's edge
35 to 45	Greater than 3 feet but less than 8 feet from a lane's edge

If you use traffic cones or delineators to delineate a temporary edge of a traffic lane, the line of cones or delineators is considered the edge of the traffic lane.

Do not reduce a lane width to less than 10 feet.

If a lane is closed with channelizers for excavation work, move the devices to the adjacent edge of the traveled way when not excavating. Space the devices the same as specified for the lane closure.

Do not move or temporarily suspend anything over a lane open to the public unless the public is protected.

7-1.05 INDEMNIFICATION

7-1.05A General

You must defend, indemnify, and save harmless the State, including its officers, employees, and agents (excluding agents who are design professionals), from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity (Section 7-1.05 Claims) arising out of or in connection with your performance of this Contract for:

1. Bodily injury including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of you, the State, or any other contractor; and
2. Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of you or anyone directly or indirectly employed by you or anyone for whose acts you may be liable.

Except as otherwise provided by law, these requirements apply regardless of the existence or degree of fault of the State. You are not obligated to indemnify the State for Claims arising from conduct delineated in Civ Code § 2782 and for Claims arising from any defective or substandard condition of the highway that existed at or before the start of work, unless this condition has been changed by the work or the scope of the work requires you to maintain existing highway facilities and the Claim arises from your failure to maintain. Your defense and indemnity obligation shall extend to Claims arising after the work is completed and accepted if the Claims are directly related to alleged acts or omissions by you that occurred during the course of the work. No inspection by the State is a waiver of full compliance with these requirements.

Your obligation to defend and indemnify is not excused because of your inability to evaluate liability or because you evaluate liability and determine that you are not liable. You must respond within 30 days to the tender of any Claim for defense and indemnity by the State, unless this time has been extended by the State. If you fail to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, the Department may withhold such funds the State reasonably considers necessary for its defense and indemnity until disposition has been made of the Claim or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

With respect to third-party claims against you, you waive all rights of any type to express or implied indemnity against the State, its officers, employees, or agents (excluding agents who are design professionals).

Nothing in the Contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these indemnification specifications.

7-1.05B Responsibility to Other Entities

You are responsible for any liability imposed by law and for injuries to or death of any person, including workers and the public, or damage to property. Indemnify and save harmless any county, city or district and its officers and employees connected with the work, within the limits of which county, city, or district the work is being performed, all in the same manner and to the same extent specified for the protection of the State.

7-1.06 INSURANCE

7-1.06A General

Nothing in the Contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.

7-1.06B Casualty Insurance

Obtain and maintain insurance on all of your operations with companies acceptable to the State as follows:

1. Keep all insurance in full force and effect from the beginning of the work through Contract acceptance.
2. All insurance must be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
3. Maintain completed operations coverage with a carrier acceptable to the State through the expiration of the patent deficiency in construction statute of repose set forth in Civ Pro Code § 337.1.

7-1.06C Workers' Compensation and Employer's Liability Insurance

Under Labor Code § 1860, secure the payment of worker's compensation under Labor Code § 3700.

Submit to the Department the following certification before performing the work (Labor Code § 1861):

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contract signing constitutes certification submittal.

Provide Employer's Liability Insurance in amounts not less than:

1. \$1,000,000 for each accident for bodily injury by accident
2. \$1,000,000 policy limit for bodily injury by disease
3. \$1,000,000 for each employee for bodily injury by disease

If there is an exposure of injury to your employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage must be included for such injuries or claims.

7-1.06D Liability Insurance

7-1.06D(1) General

Carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of you providing insurance for bodily injury liability and property damage liability for the following limits and including coverage for:

1. Premises, operations and mobile equipment
2. Products and completed operations
3. Broad form property damage (including completed operations)
4. Explosion, collapse, and underground hazards
5. Personal injury
6. Contractual liability

7-1.06D(2) Liability Limits/Additional Insureds

The limits of liability must be at least the following amounts:

DRAFT 03-19-09**Liability Limits**

Total bid	For each occurrence ^a	Aggregate for products/completed operation	General aggregate ^b	Umbrella or excess liability ^c
≤\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
>\$1,000,000 ≤\$5,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
>\$5,000,000 ≤\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
>\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000

^aCombined single limit for bodily injury and property damage.

^bThis limit must apply separately to your work under this Contract.

^cThe umbrella or excess policy must contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

Do not require a small business subcontractor to carry liability insurance that exceeds the limits shown in the preceding table. For a small business subcontractor, interpret *Total Bid* in the table as the dollar amount of subcontracted work. As used in section 7-1.06D(2) <Liability Limits/Additional Insureds>, a small business is as defined:

1. In 2 CA Code of Regs § 1896 for a non-federal-aid contract
2. By the Small Business Administration under 13 CFR 121.201 for a federal-aid contract

The State, including its officers, directors, agents (excluding agents who are design professionals), and employees, must be named as additional insureds under the General Liability and Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed by or on behalf of you under this Contract. Coverage for such additional insureds does not extend to liability:

1. Arising from any defective or substandard condition of the roadway which existed at or before the time you started work, unless such condition has been changed by the work or the scope of the work requires you to maintain existing roadway facilities and the claim arises from your failure to maintain;
2. For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of you that occurred during the course of the work; or
3. To the extent prohibited by Ins Code § 11580.04.

Additional insured coverage must be provided by a policy provision or by an endorsement providing coverage at least as broad as *Additional Insured* (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO), or other form designated by the Department.

7-1.06D(3) Contractor's Insurance Policy is Primary

The policy must stipulate that the insurance afforded the additional insureds applies as primary insurance. Any other insurance or self-insurance maintained by the State is excess only and must not be called upon to contribute with this insurance.

7-1.06E Automobile Liability Insurance

Carry automobile liability insurance, including coverage for all owned, hired, and nonowned automobiles. The primary limits of liability must be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The umbrella or excess liability coverage required under section 7-1.06D(2) <Liability Limits/Additional Insureds> also applies to automobile liability.

7-1.06F Policy Forms, Endorsements, and Certificates

Provide your General Liability Insurance under Commercial General Liability policy form No. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form No. CG0001.

7-1.06G Deductibles

The State may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to the interests of the State. Regardless of the allowance of exclusions or deductions by the State, you are responsible for any deductible amount and must warrant that the coverage provided to the State complies with section 7-1.06 <Insurance>.

7-1.06H Enforcement

The Department may assure your compliance with your insurance obligations. Ten days before an insurance policy lapses or is canceled during the Contract period you must submit to the Department evidence of renewal or replacement of the policy.

If you fail to maintain any required insurance coverage, the Department may maintain this coverage and withhold or charge the expense to you or terminate your control of the work.

You are not relieved of your duties and responsibilities to indemnify, defend, and hold harmless the State, its officers, agents, and employees by the Department's acceptance of insurance policies and certificates.

Minimum insurance coverage amounts do not relieve you for liability in excess of such coverage, nor do they preclude the State from taking other actions available to it, including the withholding of funds under this Contract.

7-1.06I Self-Insurance

Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and approval by the State.

If you use a self-insurance program or self-insured retention, you must provide the State with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Execution of the Contract is your acknowledgment that you will be bound by all laws as if you were an insurer as defined under Ins Code § 23 and that the self-insurance program or self-insured retention shall operate as insurance as defined under Ins Code § 22.

7-1.07 LEGAL ACTIONS AGAINST THE DEPARTMENT

7-1.07A General

If legal action is brought against the Department over compliance with a state or federal law, rule, or regulation applicable to highway work, then:

1. If the Department in complying with a court order prohibits you from performing work, the resulting delay is a suspension related to your performance, unless the Department terminates the Contract.
2. If a court order other than an order to show cause or the final judgment in the action prohibits the Department from requiring you to perform work, the Department may delete the prohibited work or terminate the Contract.

7-1.07B Seal Coat Claims

Pay for claims for personal property damage caused by screening and bituminous binder. Seal coat claims are limited to:

1. 10 percent of the total bid
2. Damage occurring between the 1st day of screening spreading and 4 days after the last day of screening spreading for each seal coat location

Within 30 days of the last screening spreading, do the following:

1. Process and resolve all claims reported or submitted to you by the public as follows:
 - 1.1. Within 3 business days of receipt of a claim, submit to the Department a copy of the claim, a written analysis of the claim, and a statement indicating whether or not you will pay the claim. If you reject a claim, provide the reasons for rejection in writing.
 - 1.2. If the claimant becomes dissatisfied with your handling of the claim, immediately refer the claimant to the local district claims office for assistance in resolving the claim.
2. Submit to the Department evidence of your paid claims.

All claims presented to the Department, any district claims office, or the State Board of Control (Govt Code § 900 et seq.) are processed and resolved by the Department as follows:

1. The claims are processed as formal government claims subject to all laws and policies and are resolved as the Department determines including referring the claim to you for handling.
2. If the Department or the State Board of Control approves settlement of a claim or is ordered to pay pursuant to a court order, the claim is paid from funds withheld from you.

3. Within 3 business days of the Department's determination that you are responsible for resolving the claim, the Department sends a copy of the claim to you for resolution or notifies you of the Department's decision to resolve the claim.

The Department withholds an amount not to exceed 5 percent of the total bid to resolve all claims. The amount is held no longer than 60 days following the last spreading of screenings so that the Department has ample time to resolve any pending claims. After 60 days, any remaining amount withheld is returned to you.

If no withheld funds remain or have been returned, the Department may pay any claims and seek reimbursement from you through an offset or any other legal means. Any reimbursement or offset to be recovered from you, including all other paid claims, is limited to 10 percent of the total bid.

Section 7-1.07B <Seal Coat Claims> does not limit your obligation to defend and indemnify the Department.

7-1.08 PERSONAL LIABILITY

Neither the Director, the Engineer nor any other officer or authorized employee of the State of California, nor any officer or employee of any county, city or district shall be personally responsible for any liability arising under or by virtue of the Contract.

7-1.09–7-1.10 RESERVED

7-1.11 FEDERAL LAWS FOR FEDERAL-AID CONTRACTS

7-1.11A General

Section 7-1.11 includes specifications required in a federal-aid construction contract and applies to a federal-aid contract.

Form FHWA-1273 is included in the Contract in section 7-1.11B <FHWA-1273>. Some Contract terms on the form are different from those used in other Contract parts as shown in the following table:

FHWA-1273 Terms and Department Equivalencies

FHWA-1273 term	Equivalent term used in other contract parts
proposal	bid
SHA	Department
SHA contracting officer	Engineer
SHA resident engineer	Engineer
special provision	specification

7-1.11B FHWA-1273

FHWA-1273 Electronic version -- March 10, 1994
with revised Section VI

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Payment of Predetermined Minimum Wage
- V. Statements and Payrolls
- VI. Record of Materials, Supplies, and Labor
- VII. Subletting or Assigning the Contract
- VIII. Safety: Accident Prevention
- IX. False Statements Concerning Highway Projects
- X. Implementation of Clean Air Act and Federal Water Pollution Control Act
- XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
- XII. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. **GENERAL**

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
 - Section I, paragraph 2;
 - Section IV, paragraphs 1, 2, 3, 4, and 7;
 - Section V, paragraphs 1 and 2a through 2g.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
 - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. **NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
 - a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
 - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
 - a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the

discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. **Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these specifications, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

- b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
 - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
 - 1. The number of minority and non-minority group members and women employed in each work classification on the project;
 - 2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - 4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
 - b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

- 1. **General:**

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b) (2) of the Davis- Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.
- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - 1. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - 2. the additional classification is utilized in the area by the construction industry;
 - 3. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - 4. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

- a. Apprentices:
 - 1. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
 - 2. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

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3. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
 4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.
- b. Trainees:
1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
 2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
 3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
 4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- c. Helpers:
- Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

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(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029- 005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 1. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
 2. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
 3. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of

worked performed, as specified in the applicable wage determination incorporated into the contract.

- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

(As of May 22, 2007, Form FHWA-47 is no longer required.)

VII. SUBLETTING OR ASSIGNING THE CONTRACT

- 1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
 - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
- 2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
- 3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
- 4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

- 1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of

the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by Engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID
HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented; Shall be fined not more that \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this

clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

**Certification Regarding Debarment, Suspension, Ineligibility
and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily

excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

7-1.11C Female and Minority Goals

To comply with section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the Department is including in section 7-1.11C female and minority utilization goals for federal-aid construction contracts and subcontracts that exceed \$10,000.

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as shown in the following table:

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Minority Utilization Goals

Economic area		Goal (Percent)
174	Redding CA: Non-SMSA Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehema	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA CA Monterey 7360 San Francisco-Oakland CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo 7400 San Jose, CA CA Santa Clara, CA 7485 Santa Cruz, CA CA Santa Cruz 7500 Santa Rosa CA Sonoma 8720 Vallejo-Fairfield-Napa, CA CA Napa; CA Solano Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	28.9 25.6 19.6 14.9 9.1 17.1 23.2
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	16.1 14.3
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus 8120 Stockton, CA CA San Joaquin Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Toulumne	12.3 24.3 19.8
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA CA Kern 2840 Fresno, CA CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	19.1 26.1 23.6

180	Los Angeles, CA: SMSA Counties: 0360 Anaheim-Santa Ana-Garden Grove, CA CA Orange 4480 Los Angeles-Long Beach, CA CA Los Angeles 6000 Oxnard-Simi Valley-Ventura, CA CA Ventura 6780 Riverside-San Bernardino-Ontario, CA CA Riverside; CA San Bernardino 7480 Santa Barbara-Santa Maria-Lompoc, CA CA Santa Barbara Non-SMSA Counties CA Inyo; CA Mono; CA San Luis Obispo	11.9 28.3 21.5 19.0 19.7 24.6
181	San Diego, CA: SMSA Counties 7320 San Diego, CA CA San Diego Non-SMSA Counties CA Imperial	16.9 18.2

For each July during which work is performed under the Contract, you and each non-material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

7-1.11D Training

Section 7-1.11D applies if a number of trainees or apprentices is specified in the special provisions.

As part of your equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

You have primary responsibility for meeting this training requirement.

If you subcontract a Contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of your needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, submit to the Department:

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

Obtain the Department's approval for this submitted information before you start work. The Department credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

The primary objective of section 7-1.11D <Training> is to train and upgrade minorities and women toward journeymen status. Make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area. Show that you have made the efforts. In making these efforts, do not discriminate against any applicant for training.

Do not employ as an apprentice or trainee an employee:

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1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training

Ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. Your records must show the employee's answers to the questions.

In your training program, establish the minimum length and training type for each classification. The Department and FHWA approves a program if one of the following is met:

1. It is calculated to:
 - 1.1. Meet your equal employment opportunity responsibilities
 - 1.2. Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training and it is administered in a way consistent with the equal employment responsibilities of federal-aid highway construction contracts

Obtain Department approval for your training program before you start work involving the classification covered by the program.

Provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the FHWA division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The Department reimburses you 80 cents per hour of training given an employee on this Contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed under a federal-aid contract and you do at least one of the following:
 - 2.1. Contribute to the cost of the training
 - 2.2. Provide the instruction to the apprentice or trainee
 - 2.3. Pay the apprentice's or trainee's wages during the off-site training period
3. If you comply with section 7-1.11D <Training>

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's craft
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training
2. Certification showing the type and length of training satisfactorily completed

Maintain records and submit reports documenting your performance under section 7-1.11D <Training>.

8 PROSECUTION AND PROGRESS

8-1.01 GENERAL

Section 8 includes specifications related to prosecuting the Contract and Contract progress.

8-1.02 SCHEDULE

8-1.02A General

If the Contract includes stage construction, you may proceed with nonconflicting construction activities in any stage if satisfactory progress is maintained in preceding construction stages.

8-1.02B Critical Path Method Schedule

Before or at the preconstruction conference, submit a CPM baseline schedule.

Submit a monthly updated schedule that includes the status of work completed to date and the work yet to be performed as planned.

On each schedule, show:

1. Planned and actual start and completion date of each work activity, including applicable:
 - 1.1. Submittal development
 - 1.2. Submittal review and approval
 - 1.3. Material procurement
 - 1.4. Contract milestones and constraints
 - 1.5. Equipment and plant setup
 - 1.6. Interfaces with outside entities
 - 1.7. Erection and removal of falsework and shoring
 - 1.8. Test periods
 - 1.9. Major traffic stage change
 - 1.10. Final cleanup
2. Order that you propose to prosecute the work
3. Logical links between the time-scaled work activities
4. All controlling activities
5. Legible description of each activity
6. At least one predecessor and one successor to each activity, except for project start and project end milestones
7. Duration of not less than one working day for each activity
8. Start milestone date as the Contract approval date

You may include changes on updated schedules that do not alter the critical path or extend the schedule completion date compared to the current schedule. Changes may include:

1. Adding or deleting activities
2. Changing activity constraints
3. Changing durations
4. Changing logic

If any proposed change in planned work results in altering the critical path or extending the scheduled completion date, submit a revised schedule within 15 days of the proposed change.

For each schedule submittal:

1. Submit a plotted original, time-scaled network diagram on a sheet of at least 8.5 by 11 inches with a title block and timeline
2. If a computer program is used to make the schedule, submit a read-only compact disc or diskette containing the schedule data. Label the compact disc or diskette with:
 - 2.1. Contract number
 - 2.2. CPM schedule number and date produced
 - 2.3. File name

If the Contract does not include a bid item for progress schedule (critical path method), this work is included in the payment for the various bid items.

8-1.03 PRECONSTRUCTION CONFERENCE

Attend a preconstruction conference with key personnel, including your assigned representative, at a time and location determined by the Engineer. Submit documents as required before the preconstruction conference. You may begin work before the preconstruction conference.

Be prepared to discuss the following topics and documents:

Topics	Document
Claim resolution	[Guidance from Construction required.]
Contractor's representation	Assignment of Contractor's representative
DBE and DVBE	Final utilization reports
Equipment	Equipment list
Labor compliance and equal employment opportunity	Job site posters and benefit and payroll reports
Material inspection	Notice of Materials to be Used
Materials on hand	Request for Payment for Materials on Hand
Measurements	--
Partnering	--
Quality control	QC plans
Safety	Injury and Illness Prevention Program and job site posters
Schedule	Baseline schedule and Weekly Statement of Working Days
Subcontracting	Subcontracting Request
Surveying	Survey Request
Traffic control	Traffic contingency plan and traffic control plans
Utility work	--
Weight limitations	--
Water Pollution Control	SWPPP or WPCP
Work restrictions	PLACs
Action submittals	--

8-1.04 START OF JOB SITE ACTIVITIES

Start job site activities within 15 days after receiving notice that the Contract has been approved by the Attorney General or the attorney appointed and authorized to represent the Department. Submit a notice 72 hours before starting job site activities. If the project has more than one location of work, submit a separate notice for each location.

You may start job site activities before receiving notice of Contract approval if you:

1. Deliver the signed Contract, bonds, and evidence of insurance to the Department
2. Submit 72-hour notice
3. Obtain an encroachment permit from the Department
4. Are authorized by the Department to start
5. Perform work at your own risk
6. Perform work under the Contract

If the Contract is approved, work already performed that complies with the Contract is authorized.

If the Contract does not get approved, leave the job site in a neat condition. If a facility has been changed, restore it to its former or equivalent condition at your expense.

The Department does not adjust time for starting before the approval date.

8-1.05 TIME

Complete the work:

1. Within the number of working days specified on the Notice to Bidders for a non-cost plus time based bid
2. Within the number of working days bid for a cost plus time based bid

Meet each specified interim Contract work completion date.

The Engineer issues a *Weekly Statement of Working Days* by the end of the following week unless the Contract is suspended for reasons unrelated to your performance.

The *Weekly Statement of Working Days* shows:

1. Working days and non-working days during the reporting week
2. Time adjustments
3. Work completion date computations, including working days remaining
4. Controlling activities

You may protest a *Weekly Statement of Working Days* by:

[Guidance from Construction required.]

8-1.06 SUSPENSIONS

8-1.06A General

The Engineer may suspend work wholly or in part due to any of the following:

1. Conditions are unsuitable for work progress.
2. You fail to do any of the following:
 - 2.1. Fulfill the Engineer's orders.
 - 2.2. Fulfill a Contract part.
 - 2.3. Perform weather-dependent work when conditions are favorable so that weather-related unsuitable conditions are avoided or do not occur.

Upon the Engineer's order of suspension, suspend work immediately. Provide for public safety and a smooth and unobstructed passageway through the work zone during the suspension as under sections 7-1.03 <Public Safety> and 7-1.04 <Public Convenience>. Resume work when ordered.

8-1.06B Suspensions Unrelated to Contractor Performance

For a suspension unrelated to your performance, providing for a smooth and unobstructed passageway through the work during the suspension is force account work.

The days during a suspension unrelated to your performance are non-working days.

8-1.06C Suspensions Related to Contractor Performance

For a suspension related to your performance, the Department may provide for a smooth and unobstructed passageway through the work during the suspension and deduct the cost from payments.

The days during a suspension related to your performance are working days.

8-1.07 DELAYS

8-1.07A General

If requesting a delay-related time or payment adjustment, follow the administrative claim procedure specified in [Guidance from Construction required.]

Minimize and mitigate impacts of delays.

8-1.07B Time Adjustments

For an excusable critical delay, the Department may make a time adjustment. The Engineer uses information from the schedule to evaluate requests for time adjustments.

If requesting an adjustment, submit a revised schedule showing the delay's effect on the controlling activity. If the delay has:

1. Occurred, submit records of dates and what work was performed during the delayed activity
2. Not occurred, submit the expected dates or duration of the delayed activity

If the Engineer requests, update the schedule to the last working day before the start of the delay.

8-1.07C Payment Adjustments

The Department may make a payment adjustment for an excusable delay that affects your costs.

Only losses for idle equipment, idle workers, and equipment moving or transporting are eligible for delay-related payment adjustments.

The Engineer determines payment for idle time of equipment in the same manner as determinations are made for equipment used in the performance of force account work under section 9-1.04 <Force Account> with the following exceptions:

1. Delay factor in the *Labor Surcharge and Equipment Rental Rates* applies to each equipment rental rate.
2. Daily number of payable hours equals the normal working hours during the delay, not to exceed 8 hours per day.
3. Delay days exclude non-working days.
4. Markups are not added.

The Engineer determines payment adjustment for idle workers under section 9-1.04B, <Labor> but does not add markups.

The Engineer includes costs due to necessary extra equipment moving or transporting.

8-1.08 LIQUIDATED DAMAGES**8-1.08A General**

The Department specifies liquidated damages (Pub Cont Code § 20226). Liquidated damages, if any, accrue starting on the 1st day after the expiration of the working days through the day of Contract acceptance except as specified in sections 8-1.08B <Failure to Complete Work Parts within Specified Times> and 8-1.08C <Failure to Complete Work Parts by Specified Dates>.

The Department withholds liquidated damages before the accrual date if the anticipated liquidated damages may exceed the value of the remaining work.

Liquidated damages for all work, except plant establishment, are:

Liquidated Damages		
Total Bid		Liquidated Damages per Day
From over	To	
\$0	\$50,000	\$1,200
\$50,000	\$120,000	\$1,500
\$120,000	\$1,000,000	\$1,900
\$1,000,000	\$5,000,000	\$3,000
\$5,000,000	\$10,000,000	\$5,400
\$10,000,000	\$30,000,000	\$8,300
\$30,000,000	\$100,000,000	\$10,500
\$100,000,000	\$250,000,000	\$28,500

If all work, except plant establishment, is complete and the total number of working days have expired, liquidated damages are \$950 per day.

8-1.08B Failure to Complete Work Parts within Specified Times

The Department may deduct specified damages from payments for each day in completing a work part beyond the time specified for completing the work part.

Damages for untimely completion of work parts may not be equal to the daily amount specified as liquidated damages for the project as a whole, but the Department does not simultaneously assess damages for untimely completion of work parts and for the whole work.

Damages accrue starting the 1st day after a work part exceeds the specified time through the day the specified work part is complete.

8-1.08C Failure to Complete Work Parts by Specified Dates

The Department may deduct specified damages from payments for each day in completing a work part beyond the specified completion date for the work part.

Damages for untimely work part completion may not be equal to the daily amount specified as liquidated damages for the project as a whole, but the Department does not simultaneously assess damages for untimely work part completion and the whole work.

Damages accrue starting the 1st day after an unmet completion date through the day the work part is complete.

8-1.08D Director Days

If the work is not completed within the working days, the Director may grant director days if it serves the State's best interest.

By granting director days, the Director adds working days to the Contract. The Director may either grant enough days to eliminate the liquidated damages or fewer. In the latter case, the Department deducts liquidated damages for the remaining overrun in Contract time. The Director may deduct the Department's engineering, inspection, and overhead costs incurred during the period of extension granted as director days.

8-1.09 CONTRACTOR'S CONTROL TERMINATION

The Department may terminate your control of the work for failure to do any of the following (Pub Cont Code § 10253):

1. Supply an adequate workforce
2. Supply material as described
3. Pay subcontractors (Pub Cont Code §10262)
4. Prosecute the work as described in the Contract

The Department may also terminate your control for failure to maintain insurance coverage.

For a federal-aid project, the Department may terminate your control of the work for failure to include "Required Contract Provisions, Federal-Aid Construction Contracts" in subcontracts.

The Department gives you and your surety notice at least 5 business days before terminating control. The notice describes the failures and the time allowed to remedy the failures. If failures are not remedied within the time provided, the Department takes control of the work.

The Department may complete the work if the Department terminates the Contractor's control or you abandon the project (Pub Cont Code § 10255). The Department determines the unpaid balance under Pub Cont Code § 10258 and the Contract.

At any time before final payment of all claims, the Department may convert a Contractor's control termination to a Contract termination.

8-1.10 CONTRACT TERMINATION

8-1.10A General

The Director may terminate the Contract if it serves the State's best interest. The Department issues you a written notice, implements the termination, and pays you.

8-1.10B Relief from Responsibility for Work

Upon receiving a termination notice:

1. Stop work
2. Notify subcontractors and suppliers of the Contract termination and stop Contract-related work
3. Perform the Engineer-ordered work to secure the job site for termination
4. Remove equipment
5. Subject to the Engineer's authorization, settle termination-related claims and liabilities involving subcontractors and suppliers; assign to the Department the rights, titles, or interests held by you with respect to these parties

8-1.10C Responsibility for Materials

Upon receiving a termination notice, protect unused material until:

1. You submit an inventory of materials already produced, purchased, or ordered but not yet used; include the location of the material.
2. The Engineer identifies materials that will be retained by the Department. Submit bills of sales or other records of material title.
3. The Engineer confirms that unused materials paid by progress payment and materials furnished by the State have been delivered and stored as ordered by the Engineer.
4. The titles are transferred for materials purchased by the Department.

Dispose of materials that will not be retained by the Department.

8-1.10D Contract Acceptance after Termination

The Engineer recommends Contract acceptance after determining completion of:

1. Contract work ordered to be completed before termination
2. Other work ordered to secure the project before termination
3. Material delivery and title transfer

Payment is made as specified in [Guidance from Construction required.]

8-1.10E Payment Adjustment for Termination

If the Department issues a termination notice, the Engineer determines payment for termination based on the following:

1. Direct cost for the work:
 - 1.1. Including:
 - 1.1.1. Mobilization
 - 1.1.2. Demobilization
 - 1.1.3. Securing the job site for termination
 - 1.1.4. Losses from the sale of materials
 - 1.2. Not including:
 - 1.2.1. Cost of materials you keep
 - 1.2.2. Profit realized from the sale of materials
 - 1.2.3. Cost of material damaged by:
 - 1.2.3.1. Act of God (Pub Cont Code § 7105)
 - 1.2.3.2. Act of a public enemy
 - 1.2.3.4. Fire
 - 1.2.3.5. Flood
 - 1.2.3.6. Governor-declared state of emergency
 - 1.2.3.7. Landslide
 - 1.2.3.7. Tsunami
 - 1.2.4. Other credits
2. Cost of remedial work, as estimated by the Engineer, is not reimbursed.
3. Allowance for profit not to exceed 4 percent of the cost of the work. Prove a likelihood of having made a profit had the Contract not been terminated.
4. Material handling costs for material returned to the vendor or disposed of as ordered.

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5. Costs in determining the payment adjustment due to the termination, excluding attorney fees and litigation costs.

Termination of the Contract does not relieve the surety of its obligation for any just claims arising out of the work performed.

9 PAYMENT

9-1.01 GENERAL

Section 9 includes specifications related to work payment.

9-1.02 MEASUREMENT

9-1.02A General

The Department determines bid item quantities under U.S. customary units.

9-1.02B Weighing Equipment and Procedures

9-1.02B(1) General

The Department measures material quantities for payment with devices that comply with:

1. 4 CA Code of Regs § 4000 et seq.
2. Bus & Prof Code § 12001 et seq.

To determine the material payment quantities, use measuring devices that have been sealed by the Department of Food and Agriculture's Division of Measurement Standards or its designated representative.

If a device is not type approved by the Division of Measurement Standards, type approve it under California Test 109.

Notify the Engineer at least 1 business day in advance of equipment testing.

Use material plant controllers having elements affecting the data accuracy and delivery that have been sealed by the Department. Make available to the Department these elements for inspection. If the elements are adequate for use, the Department seals them. If security seal manipulation occurs, stop material production. Do not resume production until the Department reinspects and reseals the device.

The Department measures material paid for by weight on Contractor-furnished sealed scales regularly inspected by the Department of Food and Agriculture's Division of Measurement Standards or its designated representative.

Obtain authorization of portable vehicle scale installations before sealing.

9-1.02B(2) Equipment

Each scale must be long enough to fit an entire vehicle or a combination vehicle on the scale deck. The Department allows you to weigh a combination vehicle separately if you disconnect the vehicles.

Construct scale undersupports:

1. Using portland cement concrete containing at least 470 pounds of cement per cubic yard produced from commercial quality materials
2. So that footing heights are at least 20 inches thick
3. With a bearing surface at least 30 inches wide and bearing pressure on the footing not over 4000 pounds per square foot

In constructing a scale:

1. Furnish drainage to prevent water from saturating the ground under the scale
2. Use bulkheads that prevent displacement
3. If shimming is necessary:
 - 4.1. Use securely attached metal shims or grout
 - 4.2. Do not use wedges to shim the supports
 - 4.3. Do not use shim material in excess of 3 inches
4. Install mechanical indicating elements level, plumb, and rigidly mounted on the concrete undersupports
5. For a hopper scale, rigidly attach hopper scale lever systems and mechanical indicating elements so no weight is lost from bending or support distortion

Each scale used to determine material pay quantities must be operated by a licensed weighmaster (Bus & Prof Code § 12700 et seq.).

Submit a public weighmaster's certificate or certified daily summary weigh sheets for each weighed material quantity. The Department may witness material weighing and check and compile the daily scale weight record.

Each vehicle operator must obtain weight or load slips from the weighmaster. Submit these records at the delivery point.

9-1.02B(3) Procedures

Daily, weigh empty vehicles used to haul material paid for by weight. Each vehicle must have a legible identification mark. The Department may verify material weight by having an empty and loaded vehicle weighed on any scale the Engineer designates.

For imported topsoil measured by volume, soil amendment, and mulch:

1. Each vehicle must allow a ready and accurate contents determination
2. Unless vehicles are of uniform capacity, each vehicle must have a legible identification mark showing its volume capacity
3. Load vehicles to at least the volume capacity
4. Level vehicle loads on arrival at the delivery point

If determining a quantity paid on a volume basis is impractical or if you request and the Engineer authorizes the request, the Engineer weighs the material and converts the result to a volume measurement. The Engineer determines the conversion factors and, if you agree, adopts this method of measurement.

9-1.02C Final Pay Item Quantities

The Department shows a bid item quantity as a final pay item for payment purposes only. For a final pay item, accept payment based on the verified Bid Item List quantity, regardless of actual quantity used unless dimensions are changed by the Engineer.

9-1.03 PAYMENT SCOPE

The Department pays you for furnishing the resources and activities required to complete the Contract work. The Department's payment is full compensation for furnishing the resources and activities, including:

1. Risk, loss, damage repair, or cost of whatever character arising from or relating to the work and performance of the work
2. PLACs and taxes

Full compensation for work specified in sections 1 through 9 is included in the payment for the bid items involved unless:

1. Bid item for the work is shown on the verified Bid Item List
2. Work is specified as change order work

The Department does not pay for your loss, damage, repair, or extra costs of whatever character arising from or relating to the work that is a direct or indirect result of your choice of construction methods, materials, equipment, or manpower, unless specifically mandated by the Contract.

Payment is:

1. Full compensation for each work item specified by the description and measurement unit shown on the verified Bid Item List
2. For the price bid for each item shown on the verified Bid Item List or as changed by change order with a specified price adjustment

If an alternative is described in the Contract, the Department pays based on the bid items for the details and specifications not described as an alternative.

The Department pays for change order work based on one or a combination of the following:

1. Bid item prices
2. Force account
3. Agreed price
4. Specialist billing

If the Engineer chooses to pay for contract change order work based on an agreed price, but you and the Engineer cannot agree on the price, the Department pays by force account.

If a portion of extra work is covered by bid items, the Department pays for this work as changed quantities in those items. The Department pays for the remaining portion of the extra work by force account or agreed price.

The Department pays 10 percent per year interest for unpaid and undisputed:

1. Progress payments
2. After-acceptance payment except for claims

For these payments, interest starts to accrue 30 days after the 1st working day following the 20th day of the month payment is due.

The Department pays 6 percent per year interest for accepted claims. Interest starts to accrue 61 days after the Department accepts a *Final Claim Statement*.

The Department pays 6 percent per year interest for awards in arbitration (Civ Code § 3289).

If the amount of a deduction or withhold exceeds final payment, the Department invoices you for the difference, to be paid upon receipt.

9-1.04 FORCE ACCOUNT

9-1.04A General

For work paid by force account, the Department compares its records to your daily force account work report. When you and the Engineer agree on the contents of the daily force account work reports, the Engineer accepts the report and the Department pays for the work. If the records differ, the Department pays for the work based only on the information shown on the Department's records.

If a subcontractor performs work at force account, accept an additional 10 percent markup to the total cost of that work paid at force account, including markups specified in section 9-1.04, as reimbursement for additional administrative costs.

The markups specified in labor, materials, and equipment include compensation for all delay costs, overhead costs, and profit.

If an item's payment is adjusted for work-character changes, the Department excludes your cost of determining the adjustment.

Payment for owner-operated labor and equipment is made at the market-priced invoice submitted.

9-1.04B Labor

Labor payment is full compensation for the cost of labor used in the direct performance of the work plus a 35 percent markup. Force account labor payment consists of:

1. Employer payment to the worker for:
 - 1.1. Basic hourly wage
 - 1.2. Health and welfare
 - 1.3. Pension
 - 1.4. Vacation
 - 1.5. Training
 - 1.6. Other State and federal recognized fringe benefit payments
2. Labor surcharge percentage in *Labor Surcharge and Equipment Rental Rates* current during the work paid at force account for:

- 2.1. Workers' compensation insurance
- 2.2. Social security
- 2.3. Medicare
- 2.4. Federal unemployment insurance
- 2.5. State unemployment insurance
- 2.6. State training taxes
3. Subsistence and travel allowances paid to the workers
4. Employer payment to supervisors, if authorized

The 35 percent markup consists of payment for all overhead costs related to labor but not designated as costs of labor used in the direct performance of the work including:

1. Home office overhead
2. Field office overhead
3. Bond costs
4. Profit
5. Labor liability insurance
6. Other fixed or administrative costs that are not costs of labor used in the direct performance of the work

9-1.04C Materials

Material payment is full compensation for materials you furnish and use in the work. The Department determines the cost based on the material purchase price, including delivery charges, except

1. A 15 percent markup is added.
2. Supplier discounts are subtracted whether you took them or not.
3. If the Engineer believes the material purchase prices are excessive, the Department pays the lowest current wholesale price for a similar material quantity.
4. If you procured the materials from a source you wholly or partially own, the determined cost is based on the lower of the:
 - 4.1. Price paid by the purchaser for similar materials from that source on Contract items
 - 4.2. Current wholesale price for those materials
5. If you do not submit a material cost record within 30 days of billing, the determined cost is based on the lowest wholesale price:
 - 5.1. During that period
 - 5.2. In the quantities used

9-1.04D Equipment Rental

9-1.04D(1) General

Equipment rental payment is full compensation for:

1. Rental equipment costs, including moving rental equipment to and from the change order work site using its own power.
2. Transport equipment costs for rental equipment that cannot be transported economically using its own power. No payment is made during transport for the transported equipment.
3. 15 percent markup.

If you want to return the equipment to a location other than its original location, the payment to move the equipment must not exceed the cost of returning the equipment to its original location. If you use the equipment for work other than work paid by force account, the transportation cost is included in the other work.

Before moving or loading the equipment, obtain authorization for the equipment rental's original location.

The Department determines rental costs:

1. Using rates in *Labor Surcharge and Equipment Rental Rates*:
 - 1.1. By classifying equipment using manufacturer's ratings and manufacturer-approved changes.
 - 1.2. Current during the work paid by force account.

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- 1.3. Regardless of equipment ownership; but the Department uses the rental document rates or minimum rental cost terms if:
 - 1.3.1. Rented from equipment business you do not own.
 - 1.3.2. The Labor Surcharge and Equipment Rental Rates hourly rate is \$10.00 per hour or less.
2. Using rates established by the Engineer for equipment not listed in Labor Surcharge and Equipment Rental Rates. You may submit cost information that helps the Engineer establish the rental rate; but the Department uses the rental document rates or minimum rental cost terms if:
 - 2.1. Rented from equipment business you do not own.
 - 2.2. The Engineer establishes a rate of \$10.00 per hour or less.
3. Using rates for transport equipment not exceeding the hourly rates charged by established haulers.

Equipment rental rates include the cost of:

1. Fuel
2. Oil
3. Lubrication
4. Supplies
5. Small tools that are not consumed by use
6. Necessary attachments
7. Repairs and maintenance
8. Depreciation
9. Storage
10. Insurance
11. Incidentals

The Department pays for small tools consumed by use. The Engineer determines payment for small tools consumed by use based on Contractor-submitted invoices.

9-1.04D(2) Equipment On the Job Site

For equipment on the job site at the time required to perform work paid by force account, the time paid is the time:

1. To move the equipment to the location of work paid by force account plus an equal amount of time to move the equipment to another location on the job site when the work paid by force account is completed
2. To load and unload equipment
3. Equipment is operated to perform work paid by force account and:
 - 3.1. Hourly rates are paid in 1/2-hour increments
 - 3.2. Daily rates are paid in 1/2-day increments

9-1.04D(3) Equipment Not On the Job Site Required for Original Contract Work

For equipment not on the job site at the time required to perform work paid by force account and required for original Contract work, the time paid is the time the equipment is operated to perform work paid by force account and the time to move the equipment to a location on the job site when the work paid by force account is completed.

The minimum total time paid is:

1. 1 day if daily rates are paid
2. 8 hours if hourly rates are paid

If daily rates are recorded, equipment:

1. Idled is paid as 1/2 day
2. Operated 4 hours or less is paid as 1/2 day
3. Operated 4 hours or more is paid as 1 day

If the minimum total time exceeds 8 hours and if hourly rates are listed, the Department rounds up hours operated to the nearest 1/2-hour increment and pays based on the following table. The table does not

apply when equipment is not operated due to breakdowns; in which case rental hours are the hours the equipment was operated.

Equipment Rental Hours	
Hours operated	Hours paid
0.0	4.00
0.5	4.25
1.0	4.50
1.5	4.75
2.0	5.00
2.5	5.25
3.0	5.50
3.5	5.75
4.0	6.00
4.5	6.25
5.0	6.50
5.5	6.75
6.0	7.00
6.5	7.25
7.0	7.5
7.5	7.75
≥8.0	hours used

9-1.04D(4) Equipment Not On the Job Site Not Required for Original Contract Work

For equipment not on the job site at the time required to perform work paid by force account and not required for original Contract work, the time paid is the time:

1. To move the equipment to the location of work paid by force account plus an equal amount of time to return the equipment to its source when the work paid by force account is completed
2. To load and unload equipment
3. Equipment is operated to perform work paid by force account

For this equipment, the Engineer may authorize rates in excess of those in Labor Surcharge and Equipment Rental Rates subject to the following:

1. Equipment is not available from your normal sources or from one of your subcontractors
2. Proposed equipment rental rate is reasonable
3. Engineer authorizes the equipment source and the rental rate before you use the equipment

9-1.04D(5) Non-Owner-Operated Dump Truck Rental

Submit the rental rate for non-owner-operated dump truck rental. The Engineer determines the payment rate. Payment for non-owner-operated dump truck rental is for the cost of renting a dump truck, including its driver. For the purpose of markup payment only, the non-owner-operated dump truck is rental equipment and the owner is a subcontractor.

9-1.05 EXTRA WORK PERFORMED BY SPECIALISTS

If the Engineer determines that you or your subcontractors are not capable of performing specialty extra work, a specialist may be used. Itemize the labor, material, and equipment rental costs unless it is not the special service industry's established practice to provide itemization; in which case, the Engineer accepts current market-priced invoices for the work.

The Engineer may accept an invoice as a specialist billing for work performed at an off-job site manufacturing plant or machine shop.

The Engineer determines the cost based on the specialist invoice price minus any available or offered discounts plus a 10 percent markup.

9-1.06 CHANGED QUANTITY PAYMENT ADJUSTMENTS

9-1.06A General

The unit prices specified in section 9-1.06 are adjusted under section 9-1.04 **<Force Account>**.

9-1.06B Increases of More Than 25 Percent

If the total bid item quantity exceeds 125 percent of the quantity shown on the verified Bid Item List and if no approved *Change Order* addresses payment for the quantity exceeding 125 percent, the Engineer may adjust the unit price for the excess quantity under section 9-1.04 **<Force Account>** or the following:

1. The adjustment is the difference between the unit price and the unit cost of the total item pay quantity.
2. In determining the unit cost, the Engineer excludes the item's fixed costs. You have recovered the fixed costs in the payment for 125 percent shown on the verified Bid Item List.
3. After excluding fixed costs, the Engineer determines the item unit cost under section 9-1.04 **<Force Account>**.

If the payment for the number of units of a bid item in excess of 125 percent of the verified Bid Item List is less than \$5,000 at the unit price, the Engineer may not adjust the unit price unless you request it.

9-1.06C Decreases of More Than 25 Percent

If the total item pay quantity is less than 75 percent of the quantity shown on the verified Bid Item List and if no approved *Change Order* addresses payment for the quantity less than 75 percent, you may request a unit price adjustment. The Engineer may adjust the unit price for the decreased quantity under section 9-1.04 **<Force Account>** or the following:

1. The adjustment is the difference between the unit price and the unit cost of the total pay quantity.
2. In determining the unit cost, the Engineer includes the item's fixed costs.
3. After including fixed costs, the Engineer determines the item unit cost under section 9-1.04 **<Force Account>**.

The Department does not pay more than 75 percent of the item total in the verified Bid Item List.

9-1.06D Eliminated Items

If the Engineer eliminates an item, the Department pays your costs incurred before the Engineer's elimination notification date.

If you order authorized material for an eliminated item before the notification date and the order cannot be canceled, either of the following occurs:

1. If the material is returnable to the vendor, the Engineer orders you to return the material and the Department pays your handling costs and vendor charges.
2. The Department pays your cost for the material and its handling and becomes the material owner.

The Engineer determines the payment for the eliminated bid item under section 9-1.04 **<Force Account>**.

9-1.07 WORK-CHARACTER CHANGES

The Engineer adjusts a bid item unit price based on the difference between the cost to perform the work as planned and the cost to perform the work as changed. The Engineer determines the payment adjustment under section 9-1.04 **<Force Account>**. The Engineer adjusts payment for only the work portion that changed in character.

9-1.08 PROGRESS PAYMENTS

9-1.08A General

The Department pays you based on Engineer-prepared monthly progress estimates. Each estimate reflects:

1. Total work completed during the pay period
2. Change order work bills if approved by the 20th of a month
3. Amount for materials on hand
4. Amount earned for mobilization
5. Deductions

6. Withholds
7. Resolved claims
8. Payment adjustments

Submit certification stating the work complies with the QC procedures. The Engineer does not process a progress estimate without a signed certification.

You may protest a progress payment by:

[Guidance from Construction required.]

9-1.08B Schedule of Values

Section 9-1.08B applies to a lump sum bid item for which a schedule of values is specified to be submitted.

The sum of the amounts for the work units listed in the schedule of values must equal the lump sum price bid for the bid item.

Obtain authorization of a schedule of values before you perform work shown on the schedule. The Department does not process a partial payment for the bid item without an authorized schedule of values.

Accept progress payments for overhead, profit, bond costs, and other fixed or administrative costs as distributed proportionally among the items listed except that for a contract with a bid item for mobilization, accept progress payments for bond costs as included in the mobilization bid item.

For changed quantities of the work units listed, the Department adjusts payments in the same manner as specified for changed quantities of bid items under 9-1.06 [<Changed Quantity Payment Adjustments>](#).

9-1.08C Materials On Hand

A material on hand but not incorporated into the work is eligible for progress payment if:

1. Listed in a special provision as eligible and is in compliance with other Contract parts
2. Purchased
3. An invoice is submitted
4. Stored within the State and you submit evidence that the stored material is subject to the Department's control
5. Requested on the Department-furnished form

9-1.08D Mobilization

Mobilization is eligible for partial payments if the Contract includes a bid item for mobilization. The Department makes the partial payments under Pub Cont Code § 10264. If the Contract does not include a mobilization bid item, mobilization is included in the payment for the various bid items.

The Department pays the item total for mobilization in excess of 10 percent of the total bid in the 1st payment after Contract acceptance.

9-1.08E Withholds

9-1.08E(1) General

The Department may withhold payment for noncompliance.

The Department returns the noncompliance withhold in the progress payment following correction of noncompliance.

Withholds are not retentions under Pub Cont Code § 7107 and do not accrue interest under Pub Cont Code § 10261.5.

Withholds are cumulative and independent of deductions.

Section 9-1.08E [<Withholds>](#) does not include all withholds that may be taken; the Department may withhold other payments as specified.

9-1.08E(2) Progress Withholds

The Department withholds 10 percent of a partial payment for noncompliant progress. Noncompliant progress occurs when:

1. Total days to date exceed 75 percent of the revised Contract working days
2. Percent of working days elapsed exceeds the percent of value of work completed by more than 15 percent

The Engineer determines the percent of working days elapsed by dividing the total days to date by the revised Contract working days and converting the quotient to a percentage.

The Engineer determines the percent of value of work completed by summing payments made to date and the amount due on the current progress estimate, dividing this sum by the current total estimated value of the work, and converting the quotient to a percentage. These amounts are shown on the *Progress Payment Voucher*.

When the percent of working days elapsed minus the percent of value of work completed is less than or equal to 15 percent, the Department returns the withhold in the next progress payment.

9-1.08E(3) Performance Failure Withholds

During each estimate period you fail to comply with a Contract part, including submittal of a document as specified, the Department withholds a part of the progress payment. The documents include QC plans, schedules, traffic control plans, and water pollution control submittals.

For 1 performance failure, the Department withholds 25 percent of the progress payment but does not withhold more than 10 percent of the total bid.

For multiple performance failures, the Department withholds 100 percent of the progress payment but does not withhold more than 10 percent of the total bid.

9-1.08E(4) Stop Notice Withholds

The Department may withhold payments to cover claims filed under Civ Code § 3179 et seq.

9-1.08E(5) Penalty Withholds

Penalties include fines and damages that are proposed, assessed, or levied against you or the Department by a governmental agency or private lawsuit. Penalties are also payments made or costs incurred in settling alleged violations of federal, state, or local laws, regulations, requirements, or PLACs. The cost incurred may include the amount spent for mitigation or correcting a violation.

If you or the Department is assessed a penalty, the Department may withhold the penalty amount until the penalty disposition has been resolved. The Department may withhold penalty funds without notifying you.

Instead of the withhold, you may provide a bond equal to the highest estimated liability for any disputed penalties proposed.

9-1.08E(6) Maximum Progress Payment Withholds

Section 9-1.08E(6) applies if a table of maximum progress payments is included in the special provisions.

The Department withholds the difference between the price bid and the maximum value for progress payments for each item listed in the table titled "Maximum Progress Payments" in the special provisions.

After Contract acceptance, the Department pays you the balance due.

9-1.08E(7)–9-1.08E(10) Reserved

9-1.08F Retentions

Reserved

9-1.08G–9-1.08K Reserved

9-1.09 PAYMENT AFTER CONTRACT ACCEPTANCE

9-1.09A General

Reserved

9-1.09B Payment Before Final Estimate

After Contract acceptance, the Department pays you based on the Engineer-prepared estimate that includes withholds and the balance due after deduction of previous payments.

9-1.09C Proposed Final Estimate

The Engineer estimates the amount of work completed and shows the amount payable in a proposed final estimate based on:

1. Contract items
2. Payment adjustments
3. Work paid by force account or agreed price
4. Extra work
5. Deductions

Submit either a written final estimate acceptance or a *Final Claim Statement* no later than the 30th day after receiving the proposed final estimate. Evidence of the Contractor's receipt of the final estimate and the Engineer's receipt of the Contractor's written acceptance or *Final Claim Statement* is a delivery service's proof of delivery or Engineer's written receipt if hand delivered.

If you claim that the final estimate is less than 90 percent of your total bid, the Department adjusts the final payment to cover your overhead. The adjustment is 10 percent of the difference between the total bid and the final estimate. The Department does not make this adjustment on a terminated contract.

9-1.09D Final Payment and Claims

Reserved

9-1.10–9-1.11 RESERVED

9-1.12 CLERICAL ERRORS

For 3 years after Contract acceptance, estimates and payments are open to correction and adjustment for clerical errors. Either the Department or the Contractor pays to the other the amount due except for clerical errors resulting in an adjustment less than \$200; in which case, no payment is made.

9-1.13 ARBITRATION

Pub Cont Code § 10240 through 10240.13 provides for the resolution of contract claims by arbitration.

Start arbitration by filing a complaint with the Office of Administrative Hearings in Sacramento (1 CA Code Regs § 1350). File the arbitration complaint no later than 90 days after receiving the Department's final written decision on a claim (Pub Cont Code § 10240.1).